













THE  
LAW OF INHERITANCE

ACCORDING TO  
THE MITACSHARA

TRANSLATED BY  
H. T. COLEBROOKE, Esq.,  
WITH A SYNOPSIS THEREOF

AND TRANSLATION OF SELECTIONS FROM THE ACHARADHYA  
OF THE MITACSHARA, VEERAMITRODAYA, PURASURA  
MADHAYA, NIRNAYA SINDHU & HARALUTTA,

WITH  
A TABLE OF SUCCESSION AND AN APPENDIX

CONTAINING  
NOTES OF IMPORTANT DECISIONS OF THE PRIVY COUNCIL  
AND THE SUPERIOR COURTS OF INDIA.

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THACKER SPINK & CO.,  
LAW BOOKSELLERS AND PUBLISHERS, CALCUTTA.  
THACKER, VINING & CO., BOMBAY.

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1869.

Price. Eight Rupees.



## PREFACE.

WITH a view to give an extensive list of the Sâpindâs and Bândhus, and their order of succession according to the Western School, the Editors have undertaken to compile a new edition of Colebrooke's translation of the chapter on Inheritance, of the Mitacshara, together with translations from such other parts of the Mitacshara and other works of Hindu Law as treat of the Sâpindâs and Bândhus. The Editors have carefully avoided putting in translations from works of doubtful authority, or such as would not be generally recognised as an authority by the Western Schools. The doctrines of the sages who wrote on law at different times are to this day recognised as authorities by all the Schools of Law in India, the difference being in the different interpretation put upon them by their several commentators.

Yajnyawalcya of Mithila, whose doctrines, as published by one of his disciples, form the text of the Mitacshara, was one of the several sages who, from time to time, gave laws to the people of the land. The texts of each of these are of as great an authority in Bengal as they are in every other part of India. That these sages flourished, at different times and in different countries, cannot be a matter of doubt. It appears that Yajnyawalcya flourished in the Mithila country in the beginning of the Tretta Yoga at the time of Jânuk Raja,—a fact easily discovered from his own works. Pârâsurâ was the lawgiver of the Kâli Yoga, and flourished in the latter part of Dwâpurâ, can be gathered from the fact of his being the father of the sage Vyasa. That he was the lawgiver of the Kâli Yoga, Gautama of the Tretta Yoga, Sancha and Lic'hita of the Dwapura, and Menu of the Sutta Yoga, is found in the following verse of the Pârâsurâ Mâdhâbâ :—

कृते तु मानवो धर्मः त्रेतायां गौतमः स्मृतः ।

दापरे प्रांखलिखितः कलौ पराशरः स्मृतः ॥

But when as I where the other sages gave their laws is unknown. Their names alone can be gathered from a verse of the Mitacshara ;—

मन्त्रिविष्णुहारीतयाज्ञवल्क्योशनोऽङ्गिराः ।

यमापस्तम्बसंवर्त्ताः कात्यायनवृहस्पती ॥

पराशर व्यास शंख लिखिता दत्त गोतमौ ।

शातातपो वशिष्ठस्य धर्मशास्त्रप्रयोजकाः ॥

Manu ; Atri ; Vishnu ; Hārītā ; Yajnyawalkya ; Ushānā ; Angirā ; Yāmā ; Apāstāmbā ; Sāmivārtā ; Kātyāyanā ; Vṛhāspatī Pārāśarī ; Vyāsa ; Śāṅchā , Lic'hita ; Dācshā ; Gautāmā ; Sātātāppā ; Vāsisht'ha, are the promulgators of the Dhārmā Shāstrāś.

The names of the other sages are found in the Purānās :— Marichi , Pulastya Prākheta ; Bhrigū ; Nārādā ; Kāsyāpā ; Viswamitra ; Devala ; Rishyasringa ; Gargya ; Baudhayana ; Pat'hinasi ; Jābālī ; Sumantu ; Pārāśkārā ; Locacshi ; and Kuthāmi.

Pundit Vabasaunkara Vydyārātnā says that their Institutes are collected in a work called the Shat'trinshun Māt'tung.

The portions translated from the Mitacshara, Nirnaya Sindhu, Viranuitrodaya, and other works will, it is hoped, be of some service to the profession. Up to this time no exhaustive list of the Sāpindās, Samonodakas, or of the Bāndhus has been attempted. That the verse of the Mitacshara \* is only illustrative, and not exhaustive, stands to reason, and is borne out by several verses in the Achārādhyāyā. It is also supported by a decision of the Privy Council † as also by another decision of the High Court of Calcutta. ‡

It would, indeed, be unreasonable to think that, while the author carefully enumerates the individuals up to fourteenth degree in the ascending line, who are Sapindas and Samonodakas, many of whom could not, by any possibility, be alive to inherit the property of their progeny, he would leave out from the line of inheritance such of the *Gotrājā* as may be living at the time of the death of

\* Mit. Ch. II, Sec. 5, v. 6.

† See *Gudhar Lal Roy vs. The Government of Bengal* 1 B. L. R., P. 6, p. 41.

‡ *Amrita Kumari Debi vs. Lakhunarain Chuckerbutty* 2 B and R.

the deceased proprietor. Besides, according to the definition of Sâpindâs. as given in the Achârâdhâyâ, and from the mention. that the word wherever it occurs in the Book is to be of the same import, it would appear that the word Sâpindâ as used in Ch. II, Sec. 5, v. 5, means one related in body through one who happens to be within the sixth line of ascent from the father, or the sixth line of descent from the man himself, or the fifth line of ascent on the mother's side. According to the text, it would seem that the descendants have been excluded, and only the sons and grandsons of any one of the ancestors up to the seventh degree have been included. If this be considered correct, none but the sons and grandsons of any one of the Sâmanodâkâs (or those connected by libation of water), or by body, from the eighth to the fourteenth ancestor, can take the heritage. But it is not possible, according to the course of nature, that the ancestor in the fourteenth degree, or his son or grandson, would be living at the time of the death of a person distant from himself by fourteen, thirteen, or twelve, degrees of descent. It would be idle to think that the legislator ever contemplated that the fourteenth ancestor would remain to claim the inheritance of his descendant in the fourteenth degree, so that it is only reasonable to think that the author meant to include the descendants of such ancestors down to a degree where a common ancestor would be supposed to partake of the funeral oblation or libation of water offered by any of his other descendants as well as that of the deceased, if offered by him in his lifetime. In the *Pârâsurâ Mâdhavâ* "the relation of a Sâpindâ is said to exist whenever the same lineage or consanguinity is found to exist." In that case, a great grandson is a Sâpindâ, but he is nowhere enumerated as heir in the Mitacshara. Accordingly, the great grandson of the great grandfather is a Sâpindâ. According to the *Nirnaya Sindhoo*, an uncle and a nephew are Sâpindâs, as he who shares in the oblation offered by the uncle partakes also of that offered by the nephew. So he whose oblation is shared by the manes of any ancestor is a Sâpindâ to one whose oblations are likewise shared by the same ancestor. Similarly, Sâmanodakâs are not only the ancestors from the eighth to the fourteenth degree, and their sons and grandsons, but those whose offer of libation is shared by a common ancestor are Sâmanodâkâs

to one another. Consequently, the fourteenth in descent from the first Sāmānodākā and the thirteenth in descent from the man himself, are his Sāmānodākās, for in the one the fourteenth ancestor shares in the libation offered by his descendants of equal degree, and the father of the man partakes of the libation offered by the man himself and his descendants in the thirteenth degree. A man's descendants in the fourteenth degree would be his Sāmānodākā, for he himself partakes of the libation offered by his descendants. Of course, in inheritance, the same rule would hold. If benefit conferred be the cause of inheritance, then the person who confers that benefit, takes the inheritance in the order of its merits, and of the number of immediate ancestors who may be so benefited. According to the Shastras, the Pinda, or funeral cake, confers the greatest benefit on the manes of the dead. Therefore those who confer the funeral cake to the man himself and his ancestors, or to the manes of such of his ancestors as would have partaken of the funeral cake offered by himself, are partakers of his wealth; those nearer in blood, that is, those whose oblations would be shared by a larger number of the man's immediate ancestors, would succeed first, and so in order those who are more remote, that is, those whose oblations would be shared by a less number of the man's ancestors. Accordingly, in the second order of merit come the Samanodakas; they can offer only libation of water, and not funeral oblations. As conferring less benefit, they come next in order, and according as a greater or smaller number of the man's immediate ancestors are benefited, so should their rank be assigned in the succession. A man's connection to the family of his mother is also to the fourth in ascent from the mother herself. But the fourth ancestor of the mother could by no possibility be living to claim the inheritance of his great grandson's grandson's property, nor could his grandson be expected to live to succeed to the property of his cousin's granddaughter's son. Hence the inference is irresistible, that the author by enumerating the persons in the ascending line and their descendants in the third degree, meant not to be exhaustive but only illustrative. That the line of Sapindas would extend further stands to reason, and is borne out by the texts not only of the Mitacshara itself, but of the others of the sages whose authority cannot be questioned.

We have made an attempt to give as extensive a list of the Sapindas as we have been able. That there may be others who would come under the head of Sapindas or Samanodakas or Bandhus than those enumerated in the table of succession, is not denied. The table of succession, as given here, has been revised by Pundit Bhāvāshānkārā Vydyārātnā, and bears his sanction.

An attempt has been made by the editors to compile a Synopsis of the law as contained in Colebrooke's translation, upon the basis of right of property, time when and the manner in which partition may take place, and the order of succession to the property of a deceased owner.

In the Appendix, notes of cases up to date have been given with references to the books in which they are reported. As some volumes of the Weekly Reporter were contemporaneous with Wyman's Reporter, references have been given to both the works when the same case happened to be reported in both.

We have to acknowledge with grateful thanks the labor and trouble taken by Pundits Bhāvāshānkārā Vydyārātnā and Woomeshā Chāndrā Shēromoni, whose assistance has been of great service to us in the translation of the different Sanscrit texts not found in Colebrooke, and in the compilation of the table of succession.

We have also to thank Baboo Peary Mohun Banerjee, Government Pleader of the High Court, N. W. P., for his valuable aid in the selection of the cases, and in the revision of the work while in the press.

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## PREFACE BY COLEBROOKE

TO HIS EDITION OF THE

### DAYA BHAGA AND THE MITACSHARA.

1810.

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No branch of jurisprudence is more important than the law of successions or inheritance ; as it constitutes that part of any national system of laws, which is the most peculiar and distinct, and which is of most frequent use and extensive application.

In the law of contracts, the rules of decision, observed in the jurisprudence of different countries, are in general dictated by reason and good sense ; and rise naturally, though not always obviously, from the plain maxims of equity and right.

As to the criminal law, mankind are in general agreed in regard to the nature of crimes : and, although some diversity necessarily results from the exigencies of different states of society, leading to considerable variation in the catalogue of offences, and in the scale of relative guilt and consequent punishment, yet the fundamental principles are unaltered, and may perhaps be equally traced in every known scheme of exemplary and retributive justice.

But the rules of succession to property, being in their nature arbitrary, are in all systems of law merely conventional. Admitting even that the succession of the offspring to the parent is so obvious as almost to present a natural and universal law ; yet this very first rule is so variously modified by the usages of different nations, that its application at least must be acknowledged to be founded on consent rather than on reasoning. In the laws of one people, the rights of primogeniture are established ; in those of another, the equal succession of all the male offspring prevails ; while the rest allow the participation of the female with the male issue, some in equal, others in unequal proportions. Succession by right of representation, and the claim of descendants to inherit in the order of proximity, have been respectively established in various nations, according to the degree of favour with which

they have viewed those opposite pretensions. Proceeding from linear to collateral succession, the diversity of laws prevailing among different nations, is yet greater, and still more forcibly argues the arbitrariness of the rules. Nor is it indeed practicable to reduce the rules of succession, as actually established in any existing body of law, to a general or leading principle, unless by the assumption of some maxim not necessarily nor naturally connected with the canons of inheritance.

In proportion, then, as the law of successions is arbitrary and irreducible to fixed and general principles, it is complex and intricate in its provisions; and requires, on the part of those entrusted with the administration of justice, a previous preparation by study; for its rules and maxims cannot be rightly understood, when only hastily consulted as occasions arise. Those occasions are of daily and of hourly occurrence; and, on this account, that branch of law should be carefully and diligently studied.

In the *Hindu* jurisprudence in particular, it is the branch of law which specially and almost exclusively merits the attention of those who are qualifying themselves for the line of service in which it will become their duty to administer justice to our *Hindu* subjects, according to their own laws.

A very ample compilation on this subject is included in the Digest of *Hindu* Law, prepared by JA'GANNATHA under the directions of Sir WILLIAM JONES. But copious as that work is, it does not supersede the necessity of further aid to the study of the *Hindu* law of inheritance. In the preface to the translation of the Digest, I hinted an opinion unfavorable to the arrangement of it, as it has been executed by the native compiler. I have been confirmed in that opinion of the compilation, since its publication; and indeed the author's method of discussing together the discordant opinions maintained by the lawyers of the several schools, without distinguishing in an intelligible manner which of them is the received doctrine of each school, but on the contrary leaving it uncertain whether any of the opinions stated by him do actually prevail, or which doctrine must now be considered to be in force and which obsolete, renders his work of little utility to persons conversant with the law, and of still less service to those who are not versed in *Indian* jurisprudence; specially to the *English* reader, for whose use, through the medium of translation, the work was particularly intended.

Entertaining this opinion of it, I long ago undertook a new compilation of the law of successions with other collections of *Hindu* law, under the sanction of the Government of *Bengal*, for preparing for publication a Supplementary Digest of such parts of the law as I might consider to be most useful. Its final completion and publication have been hitherto delayed by important avocations; and it has been judged meantime advisable to offer to the public, in a detached form, a complete translation of two works materially connected with that compilation.

They are the standard authorities of the *Hindu* law of inheritance in the schools of *Benares* and *Bengal* respectively; and considerable advantage must be derived to the study of this branch of law, from access to those authentic works, in which the entire doctrine of each school, with the reasons and arguments by which it is supported, may be seen at one view and in a connected shape.

In general compilation, where the authorities are greatly multiplied, and the doctrines of many different schools, and of numerous authors are contrasted and compared, the reader is at a loss to collect the doctrines of a particular school, and to follow the train of reasoning by which they are maintained. He is confounded by the perpetual conflict of discordant opinions and jarring reductions; and by the frequent transition from the positions of one sect to the principles of another. It may be useful, then, that such a compilation should be preceded by the separate publication of the most approved works of each school. By exhibiting in an exact translation the text of the author, with notes selected from the glosses of his commentators, or from the works of other writers of the same school, a correct knowledge of that part of the *Hindu* law, which is expressly treated by him, will be made more easily attainable, than by trusting solely to a general compilation. The one is best adapted to preparatory study; the other may afterwards be profitably consulted, when a general, but accurate knowledge has been thus previously obtained by the separate study of a complete body of doctrine.

These considerations determined the publication of the present volume. It comprehends the celebrated treatise of JI'MUTA-VA'HANA on successions, which is constantly cited by the lawyers of *Bengal* under the emphatic title of *Dāya-bhāga* or "inheritance;" and an extract from the

still more celebrated *Mitācsharā*, comprising so much of this work as relates to inheritance. The range of its authority and influence is far more extensive than that of JI'MU'TA-VA'HANA'S treatise; for it is received in all the schools of *Hindu* law, from *Benares* to the southern extremity of the peninsula of *India*, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent.

The works of other eminent writers have, concurrently with the *Mitācsharā*, considerable weight in the schools of law which have respectively adopted them; as the *Smṛiti Chandricā* \* in the south of *India*; the *Chintāmani*, *Retnā'cara* and *Vivādhā-chandrā* † in *Mithilā*; the *Viramitrōdaya* and *CAMALA'CARA* ‡ at *Benares*, and the *Mayūc'ha* § among the *Marahāttas*: but all agree in generally deferring to the authority of the *Mitācsharā*, in frequently appealing to its text, and in rarely, and at the same time modestly, dissenting from its doctrines on particular questions. The *Bengal* school alone, having taken for its guide JI'MU'TA-VA'HANA'S treatise, which is, on almost every disputed point, opposite in doctrine to the *Mitācsharā*, has no deference for its authority. On this account, independently of any other considerations, it would have been necessary to admit into the present volume either his treatise, or some one of the abridgments of his doctrine which are in use, and of which the best known and most approved is RAGHUNANDANA'S *Dāya-tatva*. But the preference appeared to be decidedly due to the treatise of JI'MU'TA-VA'HANA himself; as well because he was the founder of this school, being the author of the doctrine which it has adopted; as because the subjects, which he discusses, are treated by him with eminent ability and great precision; and for this further reason, that quotations from his work, or references to it, which must become necessary in a general

\* By DEVAN'DA-BHATT'A. This excellent treatise on judicature is of great and almost paramount authority, as I am informed, in the countries occupied by the *Hindu* nations of *Drāvid*, *Tailōga* and *Carnāta* inhabiting the greatest part of the peninsula or *Deccan*.

† *Vivādhā Chintāmanī*, *Vyavahāra Chintāmanī* and other treatises of law by VA'CHESPATI MIS'RA. *Vivāda Retnā'cara*, *Vyavahāra Retnā'cara* and other compilations by *panditas* employed by CHAN'DE'S'IVARA; *Vivādhā Chandra* by MIS'RU MIS'RA or rather by his aunt LAC'HIMA or LACSHMI DE'VI.

‡ *Viramitrōdaya*, an ample and very accurate digest by MITRA MIS'RA. *Vivāda-tān'dava* and other works of CAMALA'CARA.

§ *Vyavahāra-Mayūc'ha* and other treatises by NĪ'LACANTHA.

compilation of the *Hindu* law of inheritance, can be but very imperfectly intelligible without the opportunity of consulting the whole text of his close reasoning and ample disquisitions.

Having selected, for reasons which have been here explained, the *Dāya-bhāga* of JI'MU'TA-VA'HANA and the *Mitācsharā* on inheritance, for translation and separate publication, I was led in course to draw the chief part of the annotations necessary to the illustration of the text, from the commentaries on those works. Notes have been also taken from original treatises, of which likewise brief notices will be here given, that their authority may be appreciated.

In the selection of notes from commentaries and other sources, the choice of them has not been restricted to such as might be necessary to the elucidation of the subject as it is exhibited in the *English* version; but variations in the reading and interpretation of the original text have been regularly noticed, with the view of adapting this translation to the use of those who may be induced to study it with the original *Sanscrit* text. The mere *English* reader will not be detained by these annotations, which he will of course pass by.

Having verified with great care the quotations of authors, as far as means are afforded to me by my own collection of *Sanscrit* law books (which includes, I believe, nearly all that are extant); I have added at the foot of the page notes of reference to the places in which the texts are found. They will be satisfactory to the reader, as demonstrating the general correctness of the original citations. The inaccuracies, which have been remarked, are also carefully noticed. They are few and not often important.

The sources from which the annotations have been chiefly drawn, are the following:—

The commentary of S'RI'CRISHN'A TERCA'LANCA'RA on the *Dāya-bhāga* of JI'MU'TA-VA'HANA has been chiefly and preferably used. This is the most celebrated of the glosses on the text. It is the work of a very acute logician, who interprets his author and reasons on his arguments, with great accuracy and precision; and who always illustrates the text, generally confirms its positions, but not unfrequently modifies or amends them. Its authority has been long gaining ground in the schools of law throughout



*Bengal* ; and it has almost banished from them the other expositions of the *Dāya-bhāga* ; being ranked, in general estimation, next after the treatises of JI'MU'TA-VA'HANA and RAGHUNANDANA.

An original treatise by the same author, entitled *Dāya-crama-sangraha*, contains a good compendium of the law of inheritance according to JI'MU'TA-VA'HANA'S text, as expounded in his commentary. It has been occasionally quoted in the notes : its authority being satisfactorily demonstrated by the use which was made of it in the compilation of the Digest translated by MR. HALHED ; the compilers of which transcribed largely from it, though without acknowledgment.

The earliest commentary on JI'MU'TA-VA'HANA is that of S'RINA'THA A'CHA'RYA CHU'D'A'MAN'I. It has been constantly in S'RICRISHN'A'S view, who frequently copies it ; but still oftener cites the opinions of CHU'D'A'MAN'I to correct or confute them. Notwithstanding this frequent collision of opinions, the commentary of CHU'D'A'MAN'I must be acknowledged as, in general, a very excellent exposition of the text ; and it has been usefully consulted throughout the progress of the translation, as well as for the selection, of explanatory notes.

Another commentary, anterior to S'RICHRISHNA'S, but subsequent to CHU'D'A'MAN'I'S, is that of ACHYUTA CHACRAVARTI' (author likewise of a commentary on *S'rādd'ha Vivēca*.) It is in many places quoted for refutation, and in more is closely followed by S'RICRISHN'A, but always without naming the author. It contains frequent citations from CHU'D'A'MAN'I, and is itself quoted with the name of the writer by MAHE'S'WARA. This work is upon the whole an able interpretation of the text of JI'MU'TA-VA'HANA, and has afforded much assistance in the translation of it, and furnished many notes illustrating its sense.

The commentary of MAHE'S'WARA is posterior to those of CHU'D'A'MAN'I and of ACHYUTA, both of which are cited in it ; and is probably anterior to S'RICRISHN'A'S, or at least nearly of the same date, if my information concerning these authors be correct ;\* for they appear

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\* Great-grandsons of both these writers were living in 1806 : and the grandson (daughter's son) of S'RICRISHN'A was alive in 1790. Both consequently must have lived in the first part of the last century. They are modern writers ; and S'RICRISHN'A is apparently the most recent.

to have been almost contemporary; but MAHE'S'WARA seemingly a little the elder of the two. They differ greatly in their expositions of the text, both as to the meaning and as to the manner of deducing the sense: but neither of them affords any indication of his having seen the other's work. A comparison of these different and independent interpretations has been of material aid to a right understanding and correct version of obscure and doubtful passages in JI'MU'TA-VA'HANA'S text.'

Of the remaining commentaries, of which notices had been obtained, only one other has been procured. It bears the name of RAGHUNANDANA, the author of the *Smriti-tatwa*, and the greatest authority of *Hindu* law in the province of *Bengal*. In proportion to the celebrity of the writer was the disappointment experienced on finding reason to distrust the authenticity of the work. But not being satisfied of its genuineness, and on the contrary suspecting it strongly of bearing a borrowed name, I have made a very sparing use of this commentary either in the version of the text or in the notes.

The *Dāya-tatwa* or so much of the *Smriti-tatwa* as relates to inheritance, is the undoubted composition of RAGHUNANDANA; and, in deference to the greatness of the author's name and the estimation in which his works are held among the learned *Hindus* of *Bengal*, has been throughout diligently consulted and carefully compared with JI'MU'TA-VA'HANA'S treatise, on which it is almost exclusively founded. It is indeed an excellent compendium of the law, in which not only JI'MU'TA-VA'HANA'S doctrines are in general strictly followed, but are commonly delivered in his own words in brief extracts from his text. On a few points, however, RAGHUNANDANA has differed from his master; and in some instances he has supplied deficiencies. These, as far as they have appeared to be of importance, have furnished annotations; for which his authority is of course quoted.

A commentary by CA'S'IRA'MA on RAGHUNANDANA'S *Dāya-tatwa*, has also supplied a few annotations, and has been of some use in explaining JI'MU'TA-VA'HANA'S commentators, being written in the spirit of their expositions of that author's text, particularly S'RI'CRISHN'AS gloss, and often in the very words of that commentator.

The *Dāya-rahsya* or *Smriti-ratná valī* of RA'MANA'THA VIDYA'-VA'CHE'SPATI, having obtained a considerable

degree of authority in some of the districts of *Bengal*, has been frequently consulted, and is sometimes quoted in the notes. It is a work not devoid of merit : but, as it differs in some material points from both *JĪMU'TA-VA'HANA* and *RAGHUNANDANA*, it tends too much to un-  
hinge the certainty of the law on some important questions of very frequent recurrence. The same author has written a commentary on *JĪMU'TA-VA'HANA'S Dāya-bhagá*, and makes a reference to it at the close of his own original treatise. My researches, however, and endeavours to procure a copy of it, have not been successful. I should else have considered it right to advert frequently to it in the illustrations of the text.

Other treatises on inheritance according to the doctrines received in *Bengal*, as the *Dāya-nirn'ya* of *S'RI'CARA BHAT'T'A'CH'ARYA* and one or two more which have fallen under my inspection, are little else than epitomes of the work of *RAGHUNANDANA* or of *JĪMU'TA-VA'HANA* : and on this account have been scarcely at all used in preparing the present publication.

The remaining names, which occur in the notes, are of works or of their authors belonging to other schools. These are rarely, I may say never, cited, unless for variations in the reading of original texts of legislators ; excepting only the *Viramitródaya* of *MITRA-MIS'RA* ; from whose work a few quotations may be found in the notes, contradicting passages of the text. This author, in the compilation mentioned, uniformly examines and refutes the peculiar doctrines maintained by *JĪMU'TA-VA'HANA* and *RAGHUNANDANA* : but it did not fall within the design of the present publication to exhibit the controversial arguments of the modern opponents of the *Bengal* school ; and quotations from his work have been therefore sparingly inserted in the notes to *JĪMU'TA-VA'HANA'S* treatise.

The commentaries on the *Mitácshará* of *VIJNYA'NE'S'WARA* are less numerous. Of four, concerning which I have notices, two only have been procured. The *Subód'hini* by *VIS'VE'S'WARA BHAT'T'A* ; and a commentary by a modern author, *BA'LAM BHAT'T'A*.

The *Subód'hini* is a collection of notes elucidating the obscure passages of the *Mitácshará*, concisely, but perspicuously. It leaves few difficulties unexplained, and dwells on them no further than is necessary to their elucidation. The commentator is author likewise of a

compilation entitled *Madanapárijāta*, chiefly on religious law, but comprising a chapter on inheritance, a topic connected with that of obsequies. To this work he occasionally refers from his commentary. Both therefore have been continually consulted in the progress of the translation, and have furnished a great proportion of the annotations.

BA'LAM BHAT'TA'S work is in the usual form of a perpetual comment. It proceeds, sentence by sentence, expounding every phrase, and every term, in the original text. Always copious on what is obscure and often so on what is clear, it has been satisfactory aid in the translation, even where it was busy in explaining that which was evident : for it has been gratifying to find, though no doubts were entertained, that the intended interpretation had the sanction of a commentator. BA'LAM BHAT'TA'S gloss in general follows the *Subod'hini* as far as this goes. It has supplied annotations where VIS'VE'SWARA'S commentary was silent ; or where the explanation, couched in VIS'VE'SWARA'S concise language, might be less intelligible to the *English* reader.

VIJNYA'NE'SWARA'S *Mitācsharā* being a commentary on the institutes of YA'JNYAWALKYA, it has been a natural suggestion to compare his expositions of the law, and of his author's text in particular, with the commentaries of other writers on the same institutes, viz., the ancient and copious gloss of APARA'CA of the royal house of *Silāra*, and the modern and succinct annotations of SU'LAPAN'I in his comment entitled *Dīpacalīkā*. A few notes have been selected from both these works, and chiefly from that of APARA'CA.

For like reasons the commentators on the institutes of other ancient sages have been similarly examined ; they are those of ME'DHĀ'TIT'HI and CULLU'CA BHAT'TA on MENU ; HARADATTA'S gloss on GAUTAMA, which is entitled *Mitācsharā* ; NANDA-PANDITA'S commentary under the title of *Vaijayanti*, on the institutes which bear the name of the good VISHN'U ; and those of same the author, and of MA'DHAVA A'CHĀ'RYA, on PARA'SARA.

NANDA-PANDITA is author also of an excellent treatise on adoption, entitled *Dattaca-Mimāṃsā*, of which much use has been made, among other authorities, in the enlarged illustrations which it has been judged advisable to add

to the short chapter contained in the *Mitācsharā* on this important topic of *Hindu* law.

The same writer appears, from a reference in a passage of his gloss on *VIŚHṆ'U* to have composed a commentary on the *Mitācsharā* under the title of *Pratitācsharā*. Not having been able to procure that work, but concluding that the opinions, which the writer may have there delivered, correspond with those which he has expressed in his other compositions, I have made frequent references to the rest of his writings, and particularly to his commentary on *VIŚHṆ'U*, which is a very excellent and copious work, and might serve, like the *Mitācsharā*, as a body or digest of law.

All the works of greatest authority in the several schools which hold the *Mitācsharā* in veneration, have been occasionally made to contribute to the requisite elucidation of the text, or have been cited when necessary for such deviations from its doctrine, as it has been judged right to notice in the annotations. It will be sufficient to particularize in this place the *Viramītrodaya* before mentioned, of which the greatest use has been made, that compilation conforming generally to the doctrines of the *Mitācsharā*, the words of which it very commonly cites with occasional elucidations of the text interspersed, or with express interpretations of it subjoined, or sometimes with the substitution of a paraphrase for parts of the original text. All these have been found useful auxiliaries to the professed commentaries and glosses.

This brief account of the works from which notes have been selected or aid derived, will sufficiently make known the plan on which the text of the *Mitācsharā* and that of *JĪMU'TA-VA'HANA* have been translated and elucidated, and the materials which have been employed for that purpose. It is hardly necessary to add, by way of precaution to the reader, that he will find distinguished by hyphens, whatever has been inserted from the commentaries into the text to render it more easily intelligible—a reference to the particular commentary being always made in the notes at the foot of the page.

Concerning the history and age of the authors whose works are here introduced to the attention of the *English* reader, some information will be expected. On these points, however, the notices, which have been collected,

are very imperfect, as must ever be the case in regard to the biography of *Hindu* authors.

VIJNYA'NE'S'WARA, often called YIJNYA'NA-YO'GI, the author of the *Mitácshará*, is known to have been an ascetic, and belonged, as is affirmed, to an order of *Sannyásis*, said to have been founded by SANCARA A'CHA'RYA. No further particulars concerning him have been preserved. A copy of his work has indeed been shown to me, in which, at its close, he is described as a contemporary of VICRAMA'DITYA. But the authority of this passage, which is wanting in other copies, is not sufficient to ground a belief of the antiquity of the book; especially as it cannot be well reconciled to the received opinion above noticed of the author's appertaining to a religious order founded by SANCARA A'CHA'RYA, whose age cannot be carried further back, at the utmost, than a thousand years. The limit of the lowest recent date which can possibly be assigned to this work, may be more certainly fixed from the ascertained age of the commentary; the author of which composed likewise (as already observed) the *Madana-párijáta*, so named in honor of a prince called MADANA-PALA, apparently the same who gives title to the *Madana-vinóda*, dated in the fifteenth century of the *Sambat* era.\* It may be inferred as probable, that the antiquity of the *Mitácshará* exceeds 500 and is short of 1,000 years. If indeed DILA'RES'WARA, who is frequently cited in the *Mitácshará* as an author, be the same with the celebrated RA'JA' BH'OJA, whose title may not improbably have been given to a work composed by his command, according to a practice which is by no means uncommon, the remoter limit will be reduced by more than a century, and the range of uncertainty as to the age of the *Mitácshará* will be contracted within narrower bounds.

Of JI'MU'TA-VA'HANA as little is known. The name belongs to a prince of the house of SILA'RA, of whose history some hints may be gathered from the fabulous adventures recorded of him in popular tales; and who is mentioned in an ancient and authentic inscription found at *Salset*.† It was an obvious conjecture, that the name of this prince might have been affixed to a treatise of law composed perhaps under his patronage or by his directions.

\* 1431 *Sambat*; answering to A. D. 1375.

† Asiatic Researches, Vol. I. p. 357.

That however is not the opinion of the learned in *Bengal*; who are more inclined to suppose, that the real author may have borne the name which is affixed to his work, and may have been a professed lawyer who performed the functions of judge and legal adviser to one of the most celebrated of the *Hindu* sovereigns of *Bengal*. No evidence, however, has been adduced in support of this opinion; and the period when this author flourished is therefore entirely uncertain. He cites several earlier writers; but, their age being not less doubtful than his own, no aid can be at present derived from that circumstance, towards the determination of the limits between which he is to be placed. His commentators suppose him in many places to be occupied in refuting the doctrines of the *Mitācsharā*. Probably they are right; it is however possible that he may be there refuting the doctrines of earlier authors, which may have subsequently been repeated from them in the latter compilation of VIJNYA'NE'S'WARA. Assuming, however, that the opinion of the commentators is correct, the age of JI'MU'TA-VA'HANA must be placed between that of VIJNYA'NE'S'WARA, whose doctrine he opposes, and that of RAGHUNANDANA who has followed his authority. Now RAGHUNANDANA'S date is ascertained at about three hundred years from this time; for he was pupil of VA'SUDE'VA SARVABHATMA, and studied at the same time with three other disciples of the same preceptor, who likewise have acquired great celebrity; viz., SIROMAN'I, CRISHNANANDA, and CHAITANYA: the latter is the well-known founder of the religious order and sect of *Vaishn'avas* so numerous in the vicinity of *Calcutta*, and so notorious for the scandalous dissoluteness of their morals; and, the date of his birth being held memorable by his followers, it is ascertained by his horoscope, said to be still preserved, as well as by the express mention of the date in his works, to have been 1411 of the *Saca* era, answering to Y. C. 1489: consequently RAGHUNANDANA, being his contemporary must have flourished at the beginning of the sixteenth century.

THE  
LAW OF INHERITANCE

FROM THE

MITACSHARA,

A COMMENTARY BY VIJNYANESWARA ON THE  
INSTITUTES

OF

YAJNYAWALCYA.

CHAPTER I.

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SECTION I.

*Definition of Inheritance, and of Partition.—Disquisition on Property.*

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1. EVIDENCE, human and divine, has been thus explained with [its various.] distinctions ; the partition of heritage is now propounded by the image of holiness.

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ANNOTATIONS.

1. *Evidence human and divine.*] Intending to expound with great care the chapter on Inheritance, the author shows by this verse the connexion of the first and second volumes of the book. *Subod'hini.*

*The image of holiness.*] YAJNYAWALCYA, bearing the title of contemplative saint (*Yogiswara*), and here termed the image of holiness (*Yogamurti*) BALAM-BHATTA.



2. Here the term heritage (*daya*) signifies that wealth, which becomes the property of another, solely by reason of relation to the owner—

3. It is of two sorts: unobstructed (*apratiband'ha*), or liable to obstruction (*sapratiband'ha*). The wealth of the father or of the paternal grandfather becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons: and that is an inheritance not liable to obstruction. But property devolves on parents (or uncles), brothers and the rest, upon the demise of the owner, if there be no male issue: and thus the actual existence of a son and the survival of the owner are impediments to the succession; and, on their ceasing, the property devolves [on the successor] in right of his being uncle or brother. This is an inheritance subject to obstruction. The same holds good in respect of their sons and other [descendants].

#### ANNOTATIONS.

2. *Solely by reason of relation.*] “Solely” excludes any other cause, such as purchase or the like. “Relation,” or the relative condition of parent and offspring, and so forth, must be understood of that other person, a son or kinsman, with reference to the owner of the wealth. BALAM-BHATTA.

The meaning is this. Wealth, which becomes the property of another (as a son or other person bearing relation,) in right of the relation of offspring and parent or the like, which he bears to his father or other relative who is owner of that wealth, is signified by the term ‘heritage.’ *Subod'hini*.

3. *In right of their being his sons or grandsons.*] A son and a grandson have property in the wealth of a father and of a paternal grandfather, without supposition of any other cause but themselves. Theirs consequently is inheritance not subject to obstruction. *Subod'hini*.

*Property devolves on parents, &c.*] VISWESWARA-BHATTA reads “parents, brothers, and the rest” (*pitri-bhratradinam*) and expounds it both parents, as well as brothers and so forth. BALAM-BHATTA writes and interprets ‘on uncle, and a brother or the like;’ (*pitri-ya-bhratradinam*;) but notices the other reading. Both are countenanced by different copies of the text.

4. Partition (*vibhaga*) is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate.

5. Entertaining the same opinion. NAREDA says, "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation called by the wise partition of heritage." \* "Paternal" here implies any relation which is cause of property. "By sons" indicates propinquity in general.

#### ANNOTATIONS.

*The same holds good in respect of their sons, &c.*] Here the sons or other descendants of the son and grandson are intended. The meaning is this: if relatives of the owner be forthcoming, the succession of one, whose relation to the owner was immediate, is inheritance not liable to obstruction: but the succession of one whose relation to the owner was mediate or remote, is inheritance subject to obstruction, if immediate relatives exist. *Subod'hini*.

*In respect of their son, &c.*] Meaning sons and other descendants of sons and grandsons, as well as of uncles and the rest. If relatives of the owner be forthcoming, the succession of one whose relation was immediate comes under the first sort, or mediate under the second. BALAM-BHATTA.

1. *Partition is the adjustment of divers rights.*] The adjustment, or special allotment severally, of two or more rights, vested in sons or others, relative to the whole undivided estate, by referring or applying those rights to parcels or particular portions of the aggregate, is what the word 'partition' signifies. *Subod'hini*. and BALAM-BHATTA.

5. "*When a division of the paternal estate, &c.*] Considerable variations occur in this text as cited by different authors. It is here read *putrusya*; and BALAM-BHATTA states the etymology of *putra*, signifying 'of or belonging to a father.' He censures the reading in the *Calpataru*, *pitryasya*, as ungrammatical. It is read in the *Madana-ratna*, *pitradch* 'of a father &c.' Other variations occur upon other terms of the text which is here read *tanayaih* for *putraih*; *culpyate* for *pracalpyate*; and *vyvahara-padam* for *tad-vivada-padam*. The last is noticed by the commentator BALAM-BHATTA.

\* NAREDA, 13. 1.

6. The points to be explained under this [head of inheritance\*] are, at what time, how, and by whom, a partition is to be made, of what. The time, the manner, and the persons, when, in which, and by whom it may be made, will be explained in the course of interpreting stanzas on those subjects respectively. What that is, of which a partition takes place, is here considered.

7. Does property arise from partition? or does partition of pre-existent property take place? Under this [head of discussion,\*] proprietary right is itself necessarily explained: [and the question is] Whether property be deduced from the sacred institutes alone, or from other [and temporal] proof.

#### ANNOTATIONS.

A disagreement also occurs respecting the pronoun *yatra*, for which some substitute *yas tu*, and *yattu*. See JIMUTA-VAHANA, C. 1 § 2.

*Paternal here implies, &c.*] The meaning, here expressed, is that the word "paternal," as it stands in NAKEDA's text, intends what has been termed [by the author, in his definition of heritage,] 'relation to the owner, a reason of property.' *Subod'hini*.

It intends any relation to the owner, as before mentioned, which becomes a cause of property: and it consequently includes the paternal grandfather and other [predecessors.] The author accordingly observes, 'that 'by sons' indicates propinquity in general'; meaning any immediate relative. BALAM-BHATTA.

7. *Does property arise from partition?*] Here the enquiry is twofold: for the substance, which is to be divided, is the subject of disquisition; and the doubt is whether partition be of property, or of what is not property. For the sake of this, another question is considered: Is partition the cause of property, or not? If it be not, the cause of property, but birth alone be so; then, since property is by birth, it follows that partition is of property. This is one disquisition, which the author proposes by the question "does property arise from partition," &c. Another inquiry relates to the subject of property. The author introduces it, saying "proprietary right is explained." Here the right of property is the subject of discussion: and the doubt is, whether it results from the holy institutes only, or be demonstrable by order and temporal proof. That question the author proposes. *Subod'hini*.

8. [It is alleged that] the inferring of property from the sacred code alone is right, on account of the text of GAUTAMA; "An owner is by inheritance, purchase, partition, seizure,\* or finding.† Acceptance is for a *Brahmana* an additional mode; conquest for a *Cshatriya*; gain for a *Vaisya* or *Sudra*."‡ For, if property were deducible from other proof, this text would not be pertinent. So the precept, ("A *Brahmana*, who seeks to obtain anything, even by sacrificing or by instructing, from the hand of a man, who had taken what was not given to him, is considered precisely as a thief;"||) which directs the punishment of such as obtain valuables, by officiating at religious rites, or by other similar means, from a wrong-doer who has taken what was not given to him, would be irrelevant.

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The substance, which is to be divided, is the subject of the first disquisition. Here the question is, whether partition of what is not property, be the cause of proprietary right; and thus right, arising from partition, would not be antecedent to it, since partition, which becomes the cause of that right, had not yet taken place. Or is partition not the reason of property, but birth alone? and thus, since proprietary right thence arose, partition would be of property. This is one disquisition which the author proposes: "Does property arise," &c. He introduces a second question, which serves towards the solution of the first. BALAM-BHATTA.

8. *It is alleged that the inferring of property from the sacred code alone is right.*] The author here states the opponent's argument. *Subod'hini*.

*On account of the text of GAUTAMA.*] If property were deducible from other, that is from temporal, proof, this passage of GAUTAMA's institutes would not be pertinent, since it would be useless if it were a mere repetition of what was otherwise known. BALAM-BHATTA.

*For it would belong, &c.*] The thing would belong to the taker since that relation would be alone the subject of perception. BALAM-BHATTA.

*Therefore property is a result of holy institutes exclusively.*] If property be worldly, it would follow that, when the goods of one

\* Apprehensio, vel occupatio. † Inventio.

‡ GAUTAMA, 10, 39,—42. Vide infra, § 13. || MENU, 8. 310.

if property were temporal. Moreover, were property a worldly matter, one could not say "My property has been wrongfully taken by him;" for it would belong to the taker. Or, [if it be objected that] the property of another was seized by this man, and it therefore does not become the property of the usurper; [the answer is,] then no doubt could exist, whether it appertain to one or to the other, any more than in regard to the species, whether gold, silver, or the like. Therefore property is a result of holy institutes exclusively.

9. To this the answer is, property is temporal only, for it effects transactions relative to worldly purposes, just

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#### ANNOTATIONS.

man have been seized by another, should the person who has been despoiled affirm concerning them, "My property has been taken away by this man," a doubt would not, upon hearing that, arise in the minds of the judges, whether it be the property of one or of the other. As no doubt exists regarding the species, whether gold or something else, when gold, silver, or any other worldly object is inspected, so none would exist in regard to property, for [according to the supposition] it is a worldly matter. But doubt does arise. Therefore it cannot be affirmed that the usurper has no property. Or [the meaning may be this] the opponent, who contends that it is not the property of the captor, because that which has been seized by him is another's property, must be asked—Is there or is there not proof that property is not vested in the captor? [The opponent] impeaches the first part of the alternative; "then no doubt could exist," &c. The notion is this: As no doubt arises concerning the species, when there is demonstration that it is gold or silver, so likewise, in the proposed case, no doubt could arise. Nor is the second part of the alternative admissible; for, if no evidence arise, it could not be affirmed that the captor has not property. Omitting, however, this part of the reasoning, the author closes the adversary's argument, concluding that property is deduced solely from the sacred code. *Subod'hini* and *BALAM-BHATTA*.

9. *Property is temporal only.*] The author proves his proposition that property is secular by logical deduction. Property is worldly, for it effects transactions relative to worldly purposes. Whatever

as rice or similar substances do: but the consecrated fire and the like, deducible from the sacred institutes, do not give effect to actions relative to secular purposes. [It is asked] does not a consecrated fire effect the boiling of food; and so, of the rest? [The answer is] No; for it is not as such, that the consecrated flame operates the boiling of food; but as a fire perceptible to the senses; and so, in the other cases. But, here, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but through property only. That which is not a person's property in a thing, does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen also among inhabitants of barbarous countries who are unacquainted with the practice directed in the sacred code: for purchase, sale, and similar transactions are remarked among them.

10. Moreover, such as are conversant with the science of reasoning deem regulated means of acquisition a matter

#### ANNOTATIONS.

does effect temporal ends, is temporal; as rice and other similar substances. Such, too, is property. Therefore, it is temporal. But whatever is not worldly, promotes not secular purposes as a consecrated fire and other spiritual matters. *Subod'hini*.

[For it is not as such that the consecrated flame, &c.] A hallowed fire has two characters: the spiritual one of consecration, and the worldly one of combustion. It effects the boiling of food in its worldly capacity as fire; not in its spiritual one as consecrated; for, if it did so in its last mentioned capacity, a secular fire, wanting the spiritual character of consecration, would not effect the boiling of food. Therefore the objection does not hold. Then, in the proposed case, gold or other valuable would effect the secular purpose of sale and purchase, in its character of gold or the like, not in that of property. The author replies to that objection: "It is not through its visible form," &c. Besides, the use of property is observable among barbarians, to whom the practice enjoined by the sacred institutes is unknown: and, since that cannot be otherwise accounted for, there is evidence of property being secular. *Subod'hini*.

10. *The lipsa sutra.*] The *sutra*, or aphorism here quoted is on the desire of acquisition (*lipsa*), and is the second topic (*lad'hicarana*)

of popular recognition. In the third clause of the *Lipsa sutra*\* the venerable author has stated the adverse opinion, after [obviating] an objection to it, that, 'if restrictions relative to the acquisition of goods regard the religious ceremony, there could be no property, since proprietary right is not temporal;' [by showing, that] 'the efficacy of acceptance and other modes of acquisition in constituting proprietary right is matter of popular recognition.' Does it not follow, 'if the mode of acquiring the goods concern the religious ceremony, there is no right of property, and consequently no celebration of a sacrifice.' [Answer] 'It

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in the first section (*pada*) of the fourth book (*adhyaya*) of aphorisms by JAIMINI, entitled *Mimāṃsā*. *Subod'hini* and BALAM-BHATTA.

In the clause third of the *Lipsa sutra*.] In the first clause (*varṇaca*) the distinction between religious and personal purposes is examined. In the second, the inquiry is whether the milking of kine and similar preparatives be relative to the person or to the act of religion. In the third, the question examined is whether restrictions, noticed in primeval revelation, as to the means of acquisition, (such as these, 'let a *Brahmana* acquire wealth by acceptance or the like a *Chātriya* by victory and so forth, and a *Vaiśya* by agriculture, &c.) must be taken as relative to the person or to the religious ceremony [performed by him.] *Subod'hini* and BALAM-BHATTA.

The position of the adversary is, that injunctions regarding the means of acquisition concern the religious ceremony, through the medium of the goods used by the agent; for unless that be admitted the precept would be nugatory, because there would be no one whom it affected. *Subod'hini*.

The meaning is this: As in the case of an acquisition of goods under a precept relative to sacrifice, such as this "purchase the moon plant,"† the injunction regarding the acquisition of goods concerns the religious ceremony; so does the injunction respecting acceptance and other means of acquisition. BALAM-BHATTA.

The author states an objection to this position of the adversary. The objection is this: The question, considered in the third clause of the *Lipsa sutra*, is whether injunctions regarding acquisition of

\* *Mimāṃsā*, 4, 1, 2, 3.

† SOMA, *Asclepias acida*, ROXB.

'is a blunder of any one who affirms that acquisition does not produce a proprietary right, since this is a contradiction in terms.' Accordingly, the author, having again acknowledged property to be a popular notion, when he states the demonstrated doctrine, proceeds to explain the purpose of the disquisition in this manner : 'Therefore a breach of the restriction affects the person, not the religious ceremony : ' and the

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goods concern the religious ceremony or the person. The opponent's position is, that they concern the ceremony. That is not congruous. For, if the injunctions regarding acquisition of goods concern the religious ceremony, no property would arise, since property, being spiritual, would have no worldly cause to produce it ; and no other means are shown in scripture ; and the injunctions regarding acquisition being relative to the ceremony are not relative to anything else : thus, for want of property, the religious rites would not be complete with that which was not property ; and consequently the position that injunctions, regarding acquisition of goods, concern the act of religion, is incongruous. *Subod'hini*.

He revives the position by answering that objection ; and the notion is this : the injunctions regarding acceptance and the like accomplish property ; and they will become relative to the religious ceremony through the medium of goods adapted to the performances of the ceremony ; as the husking of grain, which effects the removal of the chaff, concerns the religious ceremony through the medium of clean rice which is adapted to the ceremony. But the wise consider property as a worldly matter [resulting from birth,] like the relation of a son to his father. Consequently there is no failure in the completion of religious rites [as supposed in the objection.]

Admitting that because injunctions regarding acquisition concern the religious ceremony, the acquisition likewise must relate to the ceremony ; does it not follow, since it relates not to anything else, that there is no such thing as property ? and would not a failure of the religious ceremony ensue ? [Wherefore the adversary's position is erroneous.] The



'meaning of this passage is thus expounded.\* 'If restrictions respecting the acquisition of chattels regard the religious ceremony, its celebration would be perfect with such property only as was acquired consistently with those rules; and not so if performed with wealth obtained by infringing them; and consequently, according to the adverse opinion, the fault would not affect the man if he deviated from the rule: but, according to the demonstrated conclusion, since the restriction regarding

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author states the objection and confutes it with derision. 'Some one has blundered, affirming that acquisition does not produce property, for it is a contradiction in terms:' such is the construction of the sentence, and the meaning is this: Acquisition, which is an accident of the acquirer, is a relation between two objects [the owner and his own] like that of mother and son. Consequently there can be no acquisition without a thing to be acquired, and it is a contradiction in terms to say acquisition does not produce a proprietary right,' as it is to affirm 'my mother is a barren woman.' *Subod'hini* and BALAM-BHATTA.

The demonstrated conclusion is that, since valuables, being intended for every purpose, must be relative to the person, restrictions regarding the acquisition of them must concern the person also. BALAM-BHATTA.

The purpose of the disquisition under this topic of inquiry is stated. It is interpreted by the venerable author PRABHACARA-(GURU.) The implied sense is this. According to the adversary's position, there is no offence affecting the person in violating the injunction. But the religious ceremony is not duly accomplished with goods acquired by a breach of the injunction. It is the religious ceremony, therefore, which is affected. But, according to the demonstrated doctrine, since restrictions concern the person, the offence is his if he infringe the rule, and the religious ceremony is not affected. *Subod'hini*.

The author, by way of closing the argument, states the result as applicable to the subject proposed. It is acknowledged by the

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\*By the commentator on the *Mimāṃsā*; PRABHACARA surnamed *Guru*.

'acquisitions affects the person, the performance of the religious ceremony is complete, even with property acquired by a breach of the rule; and it is an offence on the part of a man, because he has violated an obligatory rule.' It is consequently acknowledged, that even what is gained by infringing restrictions, is property: because otherwise there would be no completion of a religious ceremony.

11. It should not be alleged that even what is obtained by robbery and other nefarious means would be property. For proprietary right in such instances is not recognised by the world; and it disagrees with received practice.

12. Thus, since property obtained by acceptance or any other [sufficient] means is established to be temporal, the acceptance of alms, as well as other [prescribed] modes

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maintainer of the right doctrine, that even what is gained by infringing the rule, much more what is acquired by other means, is property. BALAM-BHATTA.

Otherwise, that is, if a right of property in wealth, acquired even by infringing the rule, be not admitted, then, since no property temporal because the restrictions concern the religious ceremony and that, which is thus acquired, does so likewise, therefore the means of living would be unattainable, since no temporal property could exist, and consequently there could be no religious ceremony, for there would be nobody to perform it. *Subod'hini* and BALAM-BHATTA.

11. *It should not be alleged, that even what is obtained by robbery.]* If property be acknowledged in that which is acquired by infringing the restriction, might it not be supposed, that even what is obtained by robbery and other nefarious means, becomes property? The author obviates that objection. It does not become so. He removes the inconsequence of the reason. For the employment of it as such in sale and other transactions is not familiarly seen in practice. BALAM-BHATTA.

12. *Thus since property obtained by acceptance, &c.]* Property being thus proved to be temporal, the author successively refuses the several arguments before cited in support of the notion, that it is not temporal, BALAM-BHATTA.

for a *Brahmana*, conquest and similar means for a *Cshatriya*, husbandry and the like for a *Vaisya*, and service and the rest for a *Sudra*, are propounded as restrictions intended for spiritual purposes; and inheritance and other modes are stated as means common to all. "An owner is by inheritance, purchase, partition, seizure or finding."\*

13 Unobstructed heritage is here denominated "inheritance." "Purchase" is well known. "Partition" intended heritage subject to obstruction. "Occupation" or seizure is the appropriation of water, grass, wood and the like not previously appertaining to any other [person as owner.†] "Finding" is the discovery of a hidden treasure or the like. 'If these reasons exist, the person is owner.' If they take place, he becomes proprietor. 'For a *Brahmana*, that which is obtained by acceptance or the like is additional,' not common [to all the tribes]. "Additional," is understood in the subsequent sentence: 'for a *Cshatriya*, what is obtained by victory, or by amercement 'or the like is peculiar.' In the next sentence, "additional" 'is again understood:' what is gained or earned by agriculture, keeping of cattle, [traffic] and so forth, is for a *Vaisya* peculiar; and so is, for a *Sudra*, that which is 'earned in the form of wages by obedience to the regenerate 'and by similar means.' Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed

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*Common to all.*] Including even the mixed classes. BALAM-BHATTA.

13. *If these reasons exist, the person is owner.*] If such reasons are known to [exist,] the owner is known. *Subod'hini* and BALAM-BHATTA.

Both commentaries read *jnyateshu jnyayate swami*, 'Such reasons existing, an owner exists.' But copies of the text exhibit *Jateshu jayate swami*, 'Such reasons being known, the owner is known.

*Additional.*] The meaning of the term is 'excellent.' BALAM-BHATTA.

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\* GAUTAMA, 10. 39, already cited in § 8. † BALAM-BHATTA.

classes in the direct or inverse order of the tribes (as the driving of horses, which is the profession of the *Sutas* \* and so forth), is indicated by the word "earned" (*nirvishta*), for all such acquisitions assume the form of wages or hire ; and the noun (*nervesa*) is exhibited in the *tricandi* † as signifying wages.

14. As for the precept respecting the succession of the widow and the daughters, &c., † the declaration [of the order of succession] even in that text is intended to prevent mistake, although the right of property be a matter familiar to the world, where many persons might [but for that declaration] be supposed entitled to share the heritage by reason of their affinity to the late owner. The whole is therefore unexceptionable.

15. As for the remark that, if property were temporal, it could not be said "my property has been taken away

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14. *As for the precept respecting the succession* ] The author obviates an objection, that, if property be a worldly matter, the import of the text here cited is inconsistent, as it provides by precept, that the widow and certain other persons shall inherit on the owner's demise. *Subod'hini* and BALAM-BHATTA. .

*The declaration of the order of succession.* ] BALAM-BHATTA notices as a variation in the reading the words here supplied, *crama-smaranam*, 'declaration' of the order of succession, instead of *smaranam* 'declaration.'

15. *As for the remark, that if property were temporal.* ] The sense is this : in such a case, the proposition 'another's property has been taken by him' is simply apprehended from the affirmation of the complainant. But that is apprehension not proof. Accordingly, if it be contradicted, a doubt arises respecting the cause of right. Thus, if the complainant declares, "my goods have been taken by him," and the defendant affirms the contrary, a doubt arises in the

\* According to a text of *USANĀ* from which these words are taken.

† The dictionary of AMERA SINHA in three books (*Candas*). The passage here cited occurs in the 3rd book of the *Amera cośha*. Ch. 4, v. 217.

‡ Vide *infra* C. 2. Sect. 1, § 1.

by him ;\* that is not accurate, for a doubt respecting the proprietary right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right.

16. The purpose of the preceding disquisition is this. A text expresses "When *Brahmanas* have acquired wealth by a blamable act, they are cleared by the abandonment of it, with prayer and rigid austerity."† Now, if property be deducible only from sacred ordinances, that which has been obtained by accepting presents from an improper person, or by other means which are reprobated, would not be property, and consequently would not be partible among sons. But if it be a worldly matter, then even what is obtained by such means, is property, and may be divided among heirs, and the atonement above-mentioned regards the acquirer only : but sons have the right by inheritance, and therefore no blame attaches to them, since MENU declares "There are seven virtuous means of acquiring property, viz,—inheritance, &c."‡

17. Next, it is doubted whether property arise from partition, or the division be of an existent right.

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minds of umpires whether the thing were justly seized by that man, or were fairly obtained by purchase or title : and so, from a doubt respecting a purchase or other cause of property, arises a doubt concerning property which is the effect. *Subod'hini*.

16. *The purpose of the preceding disquisition is this.* Admitting property to be a worldly matter, still [its nature] seems to be an unfit [subject of inquiry] under the head of inheritance, since it matters not whether property be temporal or spiritual. Apprehending this objection, the author proceeds to explain the purpose of the disquisition. *Subod'hini*.

\*Vide § 8.

† The text is apparently referred to MENU by the commentator BALAM-BHATTA : but it is not found in MENU's institutes. A passage of similar import does, however, occur. Ch. 10, v, 111.

‡ MENU, 10. 115.

18. Of these [positions], that of property arising from partition is right, since a man, to whom a son is born, is enjoined to maintain a holy fire : for, were property vested by birth alone, the estate would be common to the son as soon as born, and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth.

19. Likewise the prohibition of a division of that which is obtained from the liberality of the father previous to separation, would not be pertinent ; since no partition of it can be supposed, for it has been given by consent of all parties. But NAREDA does propound such a prohibition : “ Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition, and any favour conferred by a father. ” \*

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18. *Is enjoined to maintain a holy fire.*] For it is ordained by a passage of the *Veda*, that “he who has a son born and who has black [not grey] hair, should consecrate a holy fire :” and the meaning of that passage is this : ‘one who has issue (for the term ‘son implies issue in general,) and whose hair is [yet] black, ‘or who is in the prime of life, that is, who is capable, one, in ‘short, who is qualified, must perform the consecration and maintenance of a holy fire.’ Does not this relate to the consecration of sacrificial fires, not to the rise of property from partition ? Anticipating this objection, he adds “if property were by birth,” &c. The meaning is this : ‘if property ‘arose from birth alone, a son would, even at the instant ‘of his birth, have ownership ; and since goods are thence- ‘forward in common, the father would not be competent to the ‘consecration of sacrificial fires and other religious acts (as funeral ‘repasts, rites on the birth of children, and other indispensable ‘ceremonies), which must be performed by the husband and wife, and ‘which can only be accomplished by expenditure of wealth,’ *Subodhini* and BALAM-BHATTA.

\* NAREDA, 13. 6.  
Nareda

20. So the text concerning an affectionate gift ( " What has been given by an affectionate husband to his wife, she may consume as she pleases when he is dead, or may give it away, excepting immovable property"†); would not be pertinent, if property were vested by birth alone. Nor is it right to connect the words "excepting immovable property" with the terms "what has been given" [in the text last cited]; for that would be a forced construction by connection of disjointed terms.

21. As for the text "The father is master of the gems, pearls and corals, and of all [other movable property]: but neither the father nor the grandfather is so of the

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20. *The text \*\*\* would not be pertinent if property were vested by birth.*] For, if property were vested at the instant of birth, no such gift could be made, since he would be incompetent even with the consent of the child, and one cannot give away what is common to others. *Subod'hini* and BALAM-BHATTA.

*Nor is it right to connect, &c* ] Is not the text, so far from being in contradiction to the right by birth, actually founded on it? for the construction is this, 'what has been given, excepting immovable property, by an affectionate husband to his wife she may consume as she pleases when he is dead:' thus, a right of property by birth being true in regard to immovables, since the gift of them is forbidden; and, by analogy, the same being true of other goods, a gift of wealth other than immovables is permitted by the provisions of the law: why then should not this text be propounded? Apprehending that objection, he says, "Nor is it right to connect, &c." The construction stated would be requisite, but it is not a proper one; for the style would be involved, if the construction connect disjointed terms. *Subod'hini*.

21. *As for the text "The father is master of the gems, &c."*] Apprehending the objection, that, since a gift of immovables through partial affection is forbidden by the plain construction of two other passages of law, birth and not partition is the cause of property, he obviates it. *Subod'hini*.

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† VISHNU according to a subsequent quotation (§. 25.) But NARADA cited by JIMUTA-VAHANA (C. 4. Sect. 1. § 23.)

whole immovable estate ;”\* and this other passage “ By favour of the father, clothes and ornaments are used, but immovable property may not be consumed, even with the father’s indulgence ;” † which passages forbid a gift of immovable property through favour : they both relate to immovables which have descended from the paternal grandfather. When the grandfather dies, his effects become the common property of the father and sons ; but it appears from this text alone, that the gems, pearls and other movables belong exclusively to the father while the immovable estate remains common.

22. Therefore property is not by birth, but by demise of the owner, or by partition. Accordingly [since the demise of the owner is a cause of property†], there is no room for supposing, that a stranger could not be prevented from taking the effects because the property was vacant after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father’s decease ; and does not require partition.

23. To this the answer is : It has been shown, that property is a matter of popular recognition ; and the right of sons and the rest, by birth, is most familiar to the world, as cannot be denied : but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned. For the text of GAUTAMA expresses “ Let ownership of wealth

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23. “ *Let ownership of wealth, &c.*”] ‘ By birth alone the heir may take the thing which is denominated ownership of wealth as the venerable teachers hold.’ *Subod’hini*.

BALAM-DHATTA notices a variation in the reading ; *ar’ha-swa-mitwat*, in the ablative case, instead of *ar’ha-swa-mitwam*, in the nominative. That reading is found in the *Dayatatwa* ; and the text is there explained in an entirely different sense. See JIMUTA-VAHANA C. 1. § 19.

\* YAJNYAWALKYA cited by JIMUTA-VAHANA (C. 2. §. 22.)

† The name of the author is not given with any quotation of this text.

† *Subod’hini* and BALAM-DHATTA.



be taken by birth ; as the venerable teachers direct." \*

24. Moreover the text above cited. "The father is master of the gems, pearls, &c." (§ 21) is pertinent on the supposition of a proprietary right vested by birth. Nor is it right to affirm, that it relates to immovables which have descended from the paternal grandfather : since the text expresses " neither the father, nor the grandfather." This maxim, that the grandfather's own acquisition should not be given away while a son or grandson is living, indicates a proprietary interest by birth. As, according to the other opinion, the precious stones, pearls, clothes, ornaments and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law ; so, according to our opinion, the father has power, under the same text, to give away such effects, though acquired by his father. There is no difference.

25. But the text of VISHNU (§20), which mentions a gift of immovables bestowed through affection, must be interpreted as relating to property acquired by the father himself and given with the consent of his son and the rest : for by the passages [above cited, as well as others not quoted, † viz. ] " The father is master of the gems, pearls, &c. (§ 21)," the fitness of any other but immovables for an affectionate gift was certain.

26. As for the alleged disqualification for religious duties which are prescribed by the *Veda*, and which require for their accomplishment the use of wealth (§18), sufficient power for such purposes is inferred from the cogency of the precept [which enjoins their performance].

27. Therefore it is a settled point, that property in the paternal or ancestral estate is by birth, [although ‡ ] the father have independent power in the disposal of effects

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27. " *No gift or sale should be made.* " ] The close of the passage is read otherwise by RAGHUNANDANA : " The dissipating of the means of support is censured ;" *vritti-lopo vigarhitah*, instead of *na danan na cha vicrayah*.

\* Not found in GAUTAMA'S institutes.

† BALAM-BHATTA.

‡ BALAM-BHATTA.

other than immovables, for indispensable acts of duty and for purposes prescribed by text of law, as gifts through affection, support of the family, relief from distress, and so forth : but he is subject to the control of his sons and the rest, in regard to the immovable estate, whether acquired by himself or inherited from his father or other predecessor ; since it is ordained, " Though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet unborn, and they who are still in the womb, require the means of support, no gift or sale should, therefore, be made."\*

28. An exception to it follows. " Even a single individual may conclude a donation, mortgage, or sale, of immovable property, during a season of distress, for the sake of the family, and especially for pious purposes "†

29. The meaning of that text is this : while the sons and grandsons are minors, and incapable of giving their consent to a gift and the like ; or while brothers are so and continue unseparated ; even one person, who is capable, may conclude a gift, hypothecation, or sale, of immovable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like, make it unavoidable.

30 The following passage " Separated kinsmen, as those who are unseparated, are equal in respect of immovables ; for one has not power over the whole, to make a gift, sale or mortgage ;" ‡ must be thus interpreted : ' among unseparated kinsmen, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in common : ' but, among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united : it is not required, on account of any want of sufficient power, in the single owner ; and the transaction is consequently valid even without the consent of separated kinsmen.

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\* VYASA as cited in other compilations.

† VRIHASPATI cited in the *Retnacara*, &c.

‡ VRIHASPATI cited in the *Retnacara*.

31. In the text, which expresses that "Land passes by six formalities; by consent of townsmen, of kinsmen, of neighbours, and of heirs, and by gift of gold and of water,"\* consent of townsmen is required for the publicity of the transaction, since it is provided, that "Acceptance of a gift, especially of land, should be public:"† but the contract is not invalid without their consent. The approbation of neighbours serves to obviate any dispute concerning the boundary. The use of the consent of kinsmen and of heirs has been explained.

32. By gift of gold and of water] Since the sale of immovables is forbidden ("In regard to the immovable estate, sale is not allowed;"‡) it may be mortgaged by consent of parties interested;§) and since donation is praised ("Both he who accepts land, and he who gives it, are performers of a holy deed, and shall go to a region of bliss; ||) if a sale must be made, it should be conducted, for the transfer of immovable property, in the form of a gift, delivering with it gold and water [to ratify the donation].

33. In respect of the right by birth, to the estate paternal or ancestral, we shall mention a distinction under a subsequent text. (Section 5 § 3.)

## SECTION II.

*Partition equable or unequal.—Four periods of partition.—Provision for wives.—Exclusion of a son who has a competence.*

1. At what time, by whom, and how, partition may be made, will be next considered. Explaining those points the author says, "When the father makes a partition, let him separate his sons [from himself] at his pleasure, and either [dismiss] the eldest with the best share, or [if he choose] all may be equal sharers."¶

\* The author of this passage is not named. † This passage also is anonymous.

‡ The origin of this quotation likewise has not been found.

§ *Brahmavivarta-purana*

¶ *Yajñawalkya*, 2. 115.

2. When a father wishes to make a partition, he may at his pleasure, separate his children from himself, whether one, two, or more sons.

3. No rule being suggested (for the will is unrestrained) the author adds, by way of restriction, "he may separate (for this term is again understood) the eldest with the best share," the middlemost, with a middle share, and the youngest with the worst share.

4. This distribution of best and other portions is propounded by MENU: "The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that; for the youngest, quarter of it." \*

5. The term "either" (§ 1) is relative to the subsequent alternative "or all may be equal sharers." That is, all, namely the eldest and the rest, should be made partakers of equal portions.

6. This unequal distribution supposes property by himself acquired. But, if the wealth descended to him from his father, an unequal partition at his pleasure is not proper: for equal ownership will be declared.

7. One period of partition is when the father desires separation, as expressed in the text "When the father makes a partition." (§ 1) Another period is while the father lives, but is indifferent to wealth and disinclined to

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2. *Separate his children.*] Make them distinct and several by giving to them shares of the inheritance. BALLAM-BHATTA.

7. *One period of partition is when the father desires separation.*] There are four periods of partition. One is while the father lives, if he desire partition. Another is, when the mother ceases to be capable of bearing issue, and the father is not desirous of sexual intercourse, and is indifferent to wealth; if his sons then require partition, though he do not wish it. Again another period is, while the mother is yet capable of bearing issue, and the father, though not consenting to partition, is old, or addicted to vicious courses, or afflicted with an incurable disease; if the sons then desire

\* MENU, 9. 112. Vide infra. Sect. 3. § 3.

pleasure, and the mother is incapable of bearing more sons ; at which time a partition is admissible, at the option of sons, against the father's wish : as is shown by NAREDA, who premises partition subsequent to the demise of both parents ("Let sons regularly divide the wealth when the father is dead ;"\*) and adds "Or when the mother is past child-bearing and the sisters are married, or when the father's sensual passions are extinguished."† Here the words "let sons regularly divide the wealth" are understood. GAUTAMA likewise, having said "After the demise of the father, let sons share his estate ;"‡ states a second period, "Or when the mother is past child-bearing ;"§ and a third, "While the father lives, if he desire separation."¶ So, while the mother is capable of bearing more issue, a partition is admissible by the choice of the sons, though the father be unwilling, if he be addicted to vice or afflicted with a lasting disease. That SANC'HA declares : "Partition of inheritance takes place without the father's wish, if he be old, disturbed in intellect, or diseased."§

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partition. The last period is, after the decease of the father VISWESWARA in *Madana-Paryjata*.

There are four periods of partition in the case of wealth acquired by the father. VISWESWARA in the *Subodhini*.

Four periods of partition among sons have been stated by the author (VIJNYANESWARA,) which are compendiously exhibited in a *twofold* division by the contemplative saint (YAJÑAWALKYA. Here, three cases may occur under that of distribution during the life of the father : viz. with, or without, his desire for separation : the case of his not desiring it being also twofold ; viz. 1st, when the mother has ceased to be capable of bearing children and the father is disinclined to pleasure, &c. 2nd, when the mother is not incapable of bearing issue, but the father is disqualified by vicious habits or the like. *Subodhini*.

The doctrine of the eastern writers [JIMUTA-VAHANA. &c] who maintain, that two periods only are admissible, the volition of the

\* NAREDA, 13. 2.

† NAREDA, 13. 3. ‡ GAUTAMA, 28. 1 || GAUTAMA, 28. 2

¶ GAUTAMA, 28. 2. § Cited as a passage of HAITA in the *Yata-kara mayucha*.

8. Two sorts of partition at the pleasure of the father have been stated ; namely, equal and unequal. The author adds a particular rule in the case of equal partition ; "If he make the allotments equal, his wives to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions."\*

9. When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom

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father and his demise, and not any third period ; † and that the text, relative to the mother's incapacity for bearing more issue, regards the estate of the paternal grandfather or other ancestor ; is refuted. BALAM-BHATTA.

We hold that while the father survives and is worthy of retaining uncontrolled power, his will alone is the cause of partition. If he be unworthy of such power, in consequence of degradation, or of retirement from the world, or the like, the son's will is likewise a cause of partition. But, in the case of his demise, the successor's own choice is of course the reason. By this mode, the periods are three. Else there must be great confusion, in the uncertainty of subject and accident, if many reasons, as extinction of worldly propensities, and so forth, must be established collectively and alternatively. Thus the mention of certain reasons in some texts, and the omission of them in others, are suitable : for the extinction of the temporal affections, and the other assigned reasons, indicate the single circumstance of the father's want of uncontrolled power ; since it is easy to establish that single foundation of the texts. *Viramitrodaya*.

*When the father's passions are extinguished.]* JIMUTA-VAHANA'S reading of the passage is different : and there are other variations of this text. See note on JIMUTA-VAHANA Ch. 1. § 33.

*Partition of inheritance takes place without the father's wish.]* A text of a contrary import is cited from the same author, by JIMUTA-VAHANA. See note on JIMUTA-VAHANA. Ch. 1. § 43.

9. *The author subsequently directs half a share.]* This and the passage cited may be supposed to bear reference to a passage which occurs near the close of the head of inheritance (Ch. 2, Sect.

\* YAJNYAWALKYA. 2. 116. † See JIMUTA-VAHANA C 1 § 44

peculiar property had not been given by their husband or by their father-in-law, must be made participant of shares equal to those sons. But, if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her: "Or if any had been given, let him assign the half."\*

10. But, if he give the superior allotment to the eldest son, and distribute similar unequal shares to the rest, his wives do not take such portions, but receive equal shares of the aggregate from which the son's deductions have been subtracted besides their own appropriate deductions specified by APASTAMBA; "The furniture in the house and her ornaments are the wife's [property]."†

11. To the alternative before stated (§ 1) the author propounds an exception; "The separation of one, who is "able to support himself and is not desirous of participation may be completed by giving him some "trifle."‡

12. To one who is himself able to earn wealth, and who is not desirous of sharing his father's goods, anything whatsoever, though not valuable, may be given, and the separation or division may be thus completed by the father; so that the children, or other heirs, of that son, may have no future claim of inheritance.

13. The distribution of greater and less shares has been shown (§ 1). To forbid, in such case, an unequal partition

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11. § 34.): but the quotation is not exact, and the text relates to a different subject.

10. *The furniture in the house; &c.*] The chairs, and the earthen and stone utensils, and the ornaments, worn by her, are the wife's deducted allotment. HARADATTA|| says the furniture, as well as the car, is the father's; and the ornaments are the wife's. BALAM-BHATTA.

13. *In any other mode.*] The commentator BALAM-BHATTA prefers another reading, *ayathasastra* 'not according to law' instead of *anyatha* "in any other mode."

\* Vide infra. C. 2. Sect. § 34.

† Vide infra. Sect. 3. 11 § 6.

‡ YAJÑYAWALKYA.

|| The scholiast of GAUTAMA.

made in any other mode than that which renders the distribution uneven by means of deductions, such as are directed by the law, the author adds "A legal distribution, made by the father among sons separated with greater or less shares, is pronounced valid."\*

14. When the distribution of more or less among sons separated by an unequal partition is legal, or such as ordained by the law; then that division, made by the father, is completely made, and cannot be afterwards set aside: as is declared by MENU and the rest. Else it fails, though made by the father. Such is the meaning; and in like manner, NAREDA declares "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate."†

### SECTION III.

#### *Partition after the Father's decease.*

1. The author next propounds another period of partition, other persons as making it, and a rule respecting the mode. "Let sons divide equally both the effects and the debts after (the demise of) their two parents."‡

2. After their two parents.] After the demise of the father and mother: here the period of the distribution is shown. The sons.] The persons, who make the distribution, are thus indicated. Equally.] A rule respecting the mode is by this declared in equal shares only, should they divide the effects and debts.

3. But MENU, having premised "partition after the death of the father and the mother," || and having declared "The eldest brother may take the patrimony entire, and the rest may live under him as under their father," ¶ has exhibited a distribution with deductions, among brethren separating after the death of their father and mother: "The portion deducted for the eldest is the

\* The scholiast of GAUTAMA.

† NAREDA, 13, 16.

‡ YAJÑAWALKYA, 2, 118.

|| MENU, 9 104. ¶ MENU, 9, 105.



twentieth part of the heritage with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it." \* The twentieth part of the whole amount of the property (to be divided, †) and the best of all the chattels, must be given (by way of deduction ‡) to the eldest; half of that, or a fortieth part, and a middling chattel, should be allotted to the middlemost; and a quarter of it, or the eightieth part with the worst chattel, to the youngest. He has also directed an unequal partition, but without deductions, among brethren separating after their parents' decease; allotting two shares to the eldest, one and a half to the next born, and one a piece to the younger brothers: "If a deduction be thus made, let equal shares of the residue be allotted: but, if there be no deduction, the shares must be distributed in this manner; let the eldest have double share, and the next born a share and a half, and the younger sons each a share: thus is the law settled." || The author himself ¶ has sanctioned an unequal distribution when a division is made during the father's life time. ("Let him either dismiss the eldest with the best share, &c." §) Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only equal shares?

4. The question is thus answered: True, this unequal partition is found in the sacred ordinances; but it must not be practised, because it is abhorred by the world; since that is forbidden by the maxim "Practise not that which is legal, but is abhorred by the world, [for \*\*] it secures not celestial bliss:" †† as the practice [of offering bulls] is shunned, on account of popular prejudice notwithstanding the injunction "Offer to a venerable priest a bull or a large goat;" ‡‡ and as the slaying of a cow

\* MENU, 9, 112. † BALAM-BHATTA. ‡ Ibid. || MENU, 9, 116—117.

¶ YAJNYAWALCYA. § Vide Sect. 2, § 1.

\*\* *Subod'hini* and BALAM-BHATTA.

†† A passage of YAJNYAWALCYA, according to the quotation of MITRA MISRA in the *Vramitrodaya*: but ascribed to MENU in BALAM-BHATTA's commentary. It has not, however, been found either in MENU's or in YAJNYAWALCYA's institutes.

‡‡ This also is a passage of YAJNYAWALCYA, according to MITRA MISRA's quotation; but has not been found in the institutes of that author.

is for the same reason disused, notwithstanding the precept "Slay a barren cow as a victim consecrated to MITRA and VARUNA." \*

5. It is expressly declared, "As the duty of an appointment [to raise up seed to another,] and as the slaying of a cow for a victim, are disused, so is partition with deductions [in favor of elder brothers]." †

6. APASTAMBA also, having delivered his own opinion, "A father, making a partition in his life time, should distribute the heritage equally among his sons ;" and having stated, as the doctrine of some, the eldest's succession to the whole estate ("Some hold, that the eldest is heir ;") and having exhibited, as the notion of others, a distribution with deductions ("In some countries, the gold, the black kine, and the black produce of the earth, belong to the eldest son ; the car appertains to the father ; and the furniture in the house and her ornaments

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4. *As the slaying of a cow is for the same reason disused.*] This is a very remarkable admission of the former prevalence of a practice, which is now held in the greatest abhorrence.

5. *The duty of an appointment.*] So the term (*niyoga-d'herma*) is here interpreted by the author of the *Viramitrodaya*. But it is explained in the *Subod'hini*, as intending the injunction of an observance, such as the offering of a bull, &c.

6. *In some countries the gold, &c.*] The sense of the text is this ; In certain countries, the gold, the black kine, the black produce of earth, as *Masha* † and other dark-coloured grain, or, as black iron, (for so some interpret the word) appertain to the eldest son ; the car and the furniture in the house, or utensils, such as stools and the like belong to the father ; || the jewels worn by her are the wife's, as well as property which she has received from the father and other kinsmen. Such respectively are the portions of the eldest son, of the father, and of his wife. *Subod'hini* and HARADATTA cited by BALAM-BHATTA.

\* A passage of the *Veda*, as the preceding one is of the *Smṛiti*, according to the remark of the *Subod'hini* and BALAM-BHATTA.

† *Smṛiti-sangraha* as cited in the *Viramitrodaya*.

‡ *Phaseolus radiatus*.

|| See a different interpretation. Sec. 2, § 10.

are the wife's ;\* as also the property [received by her] from kinsmen : so some maintain ;") has expressly forbidden it as contrary to the law , and has himself explained its inconsistency with the sacred codes : " It is recorded in scripture, without distinction, that MENU distributed his heritage among his sons†

7. Therefore unequal partition, though noticed in codes of law, should not be practised, since it is disapproved by the world and is contrary to scripture. For this reason a restriction is ordained, that brethren should divide only in equal shares.

8. It has been declared, that sons may part the effects, after the death of their father and mother. The author states an exception in regard to the mother's separate property ; " The daughters share the residue of their mother's property, after payment of her debts"‡

9. Let the daughters divide their mother's effects remaining over and above the debts ; that is, the residue after the discharge of the debts contracted by the mother. Hence, the purport of the preceding part of the text is, that sons may divide their mother's effects, which are equal to her debts or less than their amount.

10. The meaning is this : A debt, incurred by the mother, must be discharged by her sons, not by her daughters ; but her daughters shall take her property remaining above her debts ; and this is fit ; for by the

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*Among his sons.*] BALAM-BHATTIA reads *putrena* " son " in the singular ; but all copies of the *Mitacshara* and *Subod'hini*, which have been collated, exhibit the term in the plural (*putrebhyah* " son's " ; and so does the *Viramitrodaya*, quoting this passage from the *Mitacshara*.

8. *Sons may divide their mother's effects, which are equal to her debts or less* ] They may take the goods and must pay the debts. BALAM-BHATTIA.

\* Vide supra, Sect 2, § 10.

† A passage of the *Taittiriya Veda*, cited by APASTAMBA ; as here remarked by BALAM-BHATTIA.

‡ YAJNYAWALKYA, 2, 118.

maxim "A male child is procreated if the seed predominate, but a female if the woman contribute most to the foetus;" the woman's property goes to her daughters, because portions of her abound in her female children; and the father's estate goes to his sons, because portions of him abound in his male children.

11. On the subject [of daughters\*] a special rule is propounded by GAUTAMA: "A woman's property goes to her daughters, unmarried, or unprovided."† His meaning is this: if there be competition of married and unmarried daughters, the woman's separate property belongs to such of them as are unmarried; or, among the married, if there be competition of endowed and unendowed daughters, it belongs exclusively to such as are unendowed: and this term signifies 'destitute of wealth.'

12. In answer to the question, who takes the residue of the mother's goods, after payment of her debts, if there be no daughter? the author adds "And the issue succeeds in their default."‡

13. On failure of daughters, that is, if there be none, the son, or other male offspring, shall take the goods.

This, which was right under the first part of the text ("Let sons divide equally both the effects and the debts;"||) is here expressly declared for the sake of greater perspicuity.

## SECTION IV.

### *Effects not liable to Partition.*

1. The author explains what may not be divided "Whatever else is acquired by the coparcener himself,

### ANNOTATIONS.

11. *Unmarried or unprovided.*] The text is explained otherwise by JIMUTA-VAHANA (C. 4. Sect. 2. §. 13 and 23.)

*Married and unmarried*] Married signifies espoused; unmarried, maiden. *Subod'hini.*

*Endowed and unendowed.*] Endowed signifies supplied with wealth; unendowed, unfurnished with property. BALAM-BHATTA.

\* BALAM-BHATTA.

† GAUTAMA 28, 22. ‡ YAJNYAWALKYA, 2, 118. ||Vide § 1.

"without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the parceners : nor what has been gained by science."\*

2. That, which had been acquired by the coparcener himself without any detriment to the goods of his father or mother ; or which has been received by him from a friend, or obtained by marriage, shall not appertain to the co-heirs or brethren. Any property, which had descended in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause, he, among the sons, who recovers it with the acquiescence of the rest, shall not give up to the brethren or other co-heirs : the person recovering it shall take such property.

3. If it be land, he takes the fourth part, and the remainder is equally shared among all the brethren. So, SANC'HA ordains "Land [inherited] in regular succession, but which had been formerly lost and which a single [heir] shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."

4. In regular succession.] Here the word "inherited" must be understood.

5. He need not give up to the co-heirs, what has been gained by him, through science, by reading the scriptures or by expounding their meaning : the acquirer shall retain such gains.

6. Here the phrase "anything acquired by himself, without detriment to the father's estate" must be everywhere understood : and it is thus connected with each

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4. *Inherited must be understood.*] The author supplies the deficiency in the text cited by him. The words "in succession" are in the text ; "inherited" must be understood to complete the sense. *Subod'hini.*

6. *Any thing acquired by himself.*] Here, according to BALAMBHATTA's remark, either a different reading is proposed (*cinchit* for

member of the sentence ; what is obtained from a friend, without detriment to the paternal estate ; what is received in marriage without waste of the patrimony ; what is redeemed, of the hereditary estate, without expenditure of ancestral property ; what is gained by science, without use of the father's goods. Consequently, what is obtained from a friend, as the return of any obligation conferred at the charge of the patrimony ; what is received at a marriage concluded in the form termed *Asura* or the like ; what is recovered, of the hereditary estate, by the expenditure of the father's goods ; what is earned by science acquired at the expense of ancestral wealth ; all that must be shared with the whole of the brethren and with the father.

7. Thus, since the phrase "without detriment to the father's estate" is in every place understood ; what is obtained by simple acceptance, without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, presents from a friend, a dowry received at a marriage, and other particular acquisitions, need not have been specified.

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*anyat*.) or an interpretation of the words of the text, "whatever else (*anyat*)" being explained by (*cinchit*) 'any thing.'

*It is connected with every other member of the sentence.*] More is implied : for the same phrase is understood in every instance, stated in other codes, of acquisitions exempt from partition. *Subod'hini*.

*In the form termed Asura.*] For, at such a marriage, wealth is received from the bridegroom by the father or kinsmen of the bride. See MENU, 3. 31.

7. *Thus since the phrase, &c.*] A different reading is noticed by BALAM-BHATTA "Not thus ;" *na tat'ha* instead of "Thus" *tat'ha*. It is taken as a distinct sentence ; and is explained as intimating, that, on the other hand, amicable gifts and the like, acquired without detriment to the patrimony, are not liable to partition. According to this reading and interpretation, that short sentence belongs to the preceding paragraph.

In the following sentence there seems to be another difference of reading, in the phrase "without waste (or with waste) of the patri-

8. But, it is alleged, the enumeration of amicable gifts and similar acquisitions is pertinent, as showing, that such gains are exempt from partition, though obtained at the expense of the patrimony. Were it so, this would be inconsistent with the received practice of unerring person, and would contradict a passage of NAREDA: "He, who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth, gained by science"\* Moreover the definition of wealth, not participable, which is gained by learning, is so propounded by CATYAYANA: "Wealth, gained through science which was acquired from a stranger while receiving a foreign maintenance, is termed acquisition through learning"

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mony' But the reading, which is countenanced by the exposition given in the *Subod'hini*, has been preferred.

Since the phrase "*without detriment to the father's estate*" ] Since that portion of the text is applicable to gifts and other acquisitions which are specified as exempt from partition, therefore, as those acquisitions made at the charge of the patrimony are liable to be shared, so any thing obtained by mere acceptance, not being included among such acquisitions, must be subject to partition, though procured without use of the paternal goods. *Subod'hini*.

8. *As showing that such gains are exempt from partition* ] A difference in the reading of this passage, *bhagyatvat* (in the ablative case) instead *bhagyatwaya* (in the dative), is mentioned by BALAMBHARA, but he makes no difference in the interpretation.

*Would contradict a passage of Nareda.* ] Since the support of the family is there stated as a reason for partaking of the property, the right of participation in the gains of science is founded on a special cause; and is not a natural consequence of relation as a brother: and the gains of science are not naturally liable to partition, and are therefore mentioned as excepted from distribution.

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\* NAREDA, 13, 10.

9. Thus, if the phrase "without detriment to the father's estate," be taken as a separate sentence, anything obtained by mere acceptance would be exempt from partition, contrary to established practice.

10. This [condition, that the acquisition be without detriment to the patrimony,\*] is made evident by MENU : "What a brother has acquired by his labour, without using the patrimony, he need not give up to the co-heirs ; nor what has been gained by science."†

11. By labour] by science, war, or the like.

12. Is it not, unnecessary to declare, that effects obtained as presents from friends, and other similar acquisitions made without using the patrimony, are exempt from partition : since there was no ground for supposing a partition of them ? That what is acquired, belongs to the acquirer, and to no other person, is well known : but a denial implies the possible supposition of the contrary.

13. Here a certain writer thus states grounds for supposing a partition. By interpreting the text, "After the death of the father, if the eldest brother acquire any wealth, a share of that belongs to the younger brothers ; provided they have duly cultivated science ;"‡ in this manner, 'if the eldest, youngest or middlemost, acquire property before or after the death of the father, a share shall accrue to the rest, whether younger or elder ;' grounds do exist for supposing friendly presents and the like to be liable to partition, whether or not the father be living : that is accordingly denied.

14. The argument is erroneous : since there is not here a denial of what might be supposed ; but the text is a recital of that which was demonstratively true : for most texts, cited under this head, are mere recitals of that which is notorious to the world.

15. Or you may be satisfied with considering it as an exception to what is suggested by another passage, "All the brethren shall be equal sharers of that which is acquired by them in concert : "|| and it is therefore

\* *Subod'hini.*

† MENU, 9, 208. The close of this passage is read differently by CULLUCABHATTA, JIMUTA-YAHANA, &c. See JIMUTA-YAHANA. Ch. 9, Sect. 1, § 3.

‡ MENU, 9, 204.

|| VRIHASPATI cited in the *Retnacara*.



a mere error to deduce the suggestion from an indefinite import of the word "eldest" in the text before cited (§ 13). That passage must be interpreted as an exception to the general doctrine, deduced from texts concerning friendly gifts and the rest, that they are exempt from partition, both before the father's death and after his demise.

16. Other things exempt from partition, have been enumerated by MENU: "Clothes, vehicles, ornaments, prepared food, women, sacrifices, and pious acts, as well as the common way, are declared not liable to distribution." \*

17. Clothes, which have been worn, must not be divided. What is used by each person, belongs exclusively to him; and what had been worn by the father, must be given by brethren parting after the father's decease, to the person who partakes of food at his obsequies: as directed by VRIHASPATI: "The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of the funeral repast." But new clothes are subject to distribution.

18. Vehicles.] The carriages, as horses, litters or the like. Here also, that, on which each person rides, belongs exclusively to him. But the father's must be disposed of as directed in regard to his clothes. If the horses or the like be numerous, they must be distributed among co-heirs who live by the sale of them. If they cannot be divided, the number being unequal, they belong to the eldest brother: as ordained by MENU; "Let them never divide a single goat or sheep, or a single beast with

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18. *The number being unequal.*] Inequality here signifies insufficiency for shares; not imparity of number. And this is fit. Suppose three horses, and three sons: since the number is adequate to the allotment of shares, the horses may be divided. Suppose four horses and either three or five sons: since the horses do not answer to the number of coheirs, and cannot be distributed into shares in

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\* MENU, 9. 219.

uncloven hoofs : a single goat or sheep belongs to the first born." \*

19. The ornaments worn by each person are exclusively his. But what has not been used, is common and liable to partition. "Such ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves : they, who do so, are degraded from their tribe." † It appears from the condition here specified ("such ornaments as are worn,") that those, which are not worn, may be divided.

20. Prepared food, as boiled rice, sweet cakes and the like, must be similarly exempted from partition. Such food is to be consumed according to circumstances.

21. Water, or a reservoir of it, as a well or the like, being unequal [to the allotment of shares] must not be distributed by means of the value ; but is to be used [by the co-heirs] by turns.

22. The women or female slaves, being unequal [in number, to the shares,] must not be divided by the value, but should be employed in labour [for the co-heirs] alternately. But women (adulteresses or others) kept in concubinage by the father, must not be shared by the sons, though equal in number : for the text of GAUTAMA forbids it. "No partition is allowed in the case of women connected [with the father or with one of the co-heirs]." ‡

23. The term *yogacshema* is a conjunctive compound resolvable into *yoga* and *cshema*. By the word *yoga* is signified a cause of obtaining something not already

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their kind, and since a distribution by means of the value is forbidden, and the cattle is directed to be given to the eldest brother, the horses may be divided so far as they are adequate to the shares, and the surplus shall be given to the eldest. Throughout this title, imparity must be so understood. *Subod'hini*.

21. *Being unequal* ] It is thus hinted, that, if the number be adequate, partition takes place. BALAM-BHATTA.

22. "*Women connected.*" ] Enjoyed, or kept in concubinage. *Subod'hini*.

\* MENU, 9, 119.    \* † MENU, 9, 200.    † GAUTAMA, 28. 45.

obtained : that is, a sacrificial act to be performed with fire, consecrated according to the *Veda* and the law. By the term *cshema* is denoted an auspicious act which becomes the means of conservation of what has been obtained : such as the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible ; as LAUGAOSHI declares. "The learned have named a conservatory act *cshema*, and a sacrificial one *yoga* ; both are pronounced indivisible : and so are the bed and the chair."

24. Some hold, that by the compound term *yogacshema*, those who effect sacrificial and conservatory acts (*yoga* and *cshema*), are intended, as the king's counsellors, the stipendiary priests, and the rest. Others say, weapons, cowtails, parasols, shoes and similar things, are meant.

25. The common way, or road of ingress and egress to and from the house, garden, or the like, is also indivisible.

26. The exclusion of land from partition, as stated by USANAS, ("Sacrificial gains, land, written documents, prepared food, water, and women, are indivisible among kinsmen even to the thousandth degree ;") bears reference to sons of a *Brahmana* by women of the military and other inferior tribes. for it is ordained [by VRIHASPATI :] "Land, obtained by acceptance of donation, must not be given to the son of a *Cshatriya* or other wife of inferior tribe : even though his father give it to him, the son of the *Brahmani* may resume it, when his father is dead." \*

27. Sacrificial gains] acquired by officiating at religious ceremonies.

28. What is obtained through the father's favour, will be subsequently declared exempt from partition.† The

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Female slaves, being taken for enjoyment by any one of the brethren or co-heirs, belong exclusively to him. HARADATTA ON GAUTAMA.

24. *Some hold.*] The interpretation, given by MED'HATITHI and the *Calpataru*, is stated. BALAM-BHATTA.

\* This is a passage of VRIHASPATI, according to the remark of BALAM-BHATTA ; and it is cited as such by JIMUTA-VAHANA, C. 9. § 19.

† Sect. 6, § 13—16.

supposition, that anything, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible, has been already refuted. \*

29. It is settled, that whatever is acquired at the charge of the patrimony, is subject to partition. But the acquirer shall, in such a case, have a double share, by the text of VASISHT'HA. "He, among them, who has made an acquisition, may take a double portion of it." †

30. The author propounds an exception to that maxim. "But, if the common stock be improved, an equal division is ordained." ‡

31. Among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, commerce or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.

## SECTION V.

### *Equal rights of Father and son in property ancestral.*

1. The distribution of the paternal estate among sons has been shown; the author next propounds a special rule concerning the division of the grandfather's effects by grandsons. "Among grandsons by different fathers, the allotment of shares is according to the fathers." ||

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29. *He, among them.*] Among the brethren. *Subod'hini.*

1. *Grandsons by different fathers.*] Children of distinct fathers; meaning sons of brothers. Another reading also occurs: *pramita poitricanam*, "whose fathers are deceased," instead of *aneca-poitricanam* whose fathers are different." *Subod'hini.*

BALAM-BHATTA notices another variation of the reading, but with disapprobation; *aneca-pitryacanam*. It intends the same meaning, though inaccurately expressed.

\* Sect. 1. § 16. † VASISHT'HA, 17. 42. ‡ YAJNYAWALCYA, 2. 121.  
|| YAJNYAWALCYA, 2. 121.

2. Although grandsons have by birth a right in the grandfather's estate, equally with sons: still the distribution of the grandfather's property must be adjusted through their father, and not with reference to themselves. The meaning here expressed is this: if unseparated brothers die leaving male issue; and the number of sons be unequal, one having two sons, another three, and a third four, the two receive a single share in right of their father, the other three take one share appertaining to their father, and the remaining four similarly obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue, the same method should be observed: the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed by the text.

3. If the father be alive, and separate from the grandfather, or if he have no brothers, a partition of the grandfather's estate with the grandson would not take place; since it has been directed, that shares shall be allotted in right of the father, if he be deceased: or, admitting partition to take place, it would be made according to the pleasure of the father, like a distribution of his own acquisitions; to obviate this doubt the author says; "For the ownership of father and son is the same

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3. *If he be deceased.*] A variation in the reading and punctuation of the passage is noticed by BALAM-BHATTA *vibhago n'asti d'hriyamane; apitani pitrito bhaga-calpanctyuctatwat,* (instead of *vibhago n'asti; ad'hriyamane pitani pitrito, &c*) "partition would not take place, if he be living, since it is directed that shares shall be allotted in right of the father, if he be deceased"

*To obviate this doubt the author says*] If the father be alive and separated from his own father, or if, being an only son with no brothers to participate with him, he be alive and not separated from his own father; then, since in the first mentioned case he is separate, no participation of the grandson's own father, in the grandfather's estate, can be supposed, and therefore as well as because he is surviving, the grandson cannot be supposed entitled to share the grandfather's property, since the intermediate person

in land, which was acquired by the grandfather, or in a corrody, or in chattels [which belonged to him " ]\*.

4. Land] a rice field or other ground. A corrody] So many leaves receivable from a plantation of betle pepper, or so many nuts from an orchard of areca. Chattels] gold, silver, or other movables.

5. In such property, which was acquired by the paternal grandfather, through acceptance of gifts, or by conquest or other means [as commerce, agriculture, or service, † ] the ownership of father and son is notorious : and therefore partition does take place. For, or because, the right is equal, or alike, therefore partition is not restricted to be made by the father's choice ; nor has he a double share.

6. Hence also it is ordained by the preceding text, that " the allotment of shares shall be according to the fathers," (§ 1.) although the right be equal.

7. The first text " when the father makes a partition, &c." (Sect. 2 § 1.) relates to property acquired by the

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obstructs his title : and, in the second case, although the grandson's own father have pretensions to the property, since he is not separated, still the participation of the grandson in his grandfather's estate cannot be supposed, for his own father is living . hence no partition of the grandfather's effects, with the grandson whose father is living, can take place in any circumstances. Or, admitting that such partition may be made, because he has a right by birth ; still, as the father's superiority is apparent, (since a distribution by allotment to him is directed, when he is deceased ; and that is more assuredly requisite, if he be living,) it follows, that partition takes place by the father's choice and that a double share belongs to him. *Subodhini*.

*For the ownership of father and son ]* The *Calpataru* and *APARARCA* read " The ownership of both father and son " instead of " For the ownership of father and son " *chobhayoh* instead of *chana hi*.

4 *Betle pepper* ] Piper betle. LINN Betle-leaf.

*Areca*. Areca Fanfel. GOERT. Betle-nut.

\* YAJNYAWALKYA, 2. 122.

† BALAM-BHATTA.

father himself. So does that which ordains a double share : "Let the father, making a partition, reserve two shares for himself." \* The dependance of sons, as affirmed in the following passage, "While both parents live, the control remains, even though they have arrived at old age;" † must relate to effects acquired by the father or mother. This other passage, "They have not power over it (the paternal estate) while their parents live"; ‡ must also be referred to the same subject.

8. Thus, while the mother is capable of bearing more sons and the father retains his worldly affections and does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son.

9. So likewise, the grandson has a right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather : but he has no right of interference, if the effects were acquired by the father. On the contrary, he must acquiesce, because he is dependant.

10. Consequently the difference is this : although he have a right by birth in his father's and his grandfather's property ; still, since, he is dependant on his father in regard to the paternal estate and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property : but, since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction [if the father be dissipating the property. ||]

11. MENU likewise shows, that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfathers ; declaring, as he does ("If the father recover paternal wealth, not recovered by his co-heirs, he shall not, unless willing, share it with his sons ; for in fact it was acquired by him :") ¶ that, if the father recover property, which had been acquired by an ancestor, and taken away by a stranger, but not redeemed by the grandfather, he need not himself

\* NAREDA, 13. 12.

† The remainder of this passage has not been found ; nor is the text cited in other compilations BALAM-BHATTI ascribes it to MENU ; but it is not found in his institutes.

‡ MENU, 9. 204.

|| *Subodhini*.

¶ MENU, 9, 209.

share it, against his inclination, with his sons; any more than he need give up h's own acquisitions.

## SECTION VI.

### *Rights of a posthumous son and of one born after the partition.*

1. How shall a share be allotted to a son born subsequently to a partition of the estate? The author replies "When the sons have been separated, one who is [afterwards] born of a woman equal in class, shares the distribution." \*

2. The sons being separated from their father, one, who shall be afterwards born of a wife equal in class, shall share the distribution. What is distributed, is distribution, meaning the allotments of the father and mother: he shares that; in other words, he obtains after [the demise of †] parents, both their portions: his mother's portion, however, only if there be no daughter; for it is declared that "Daughters share the residue of "the mother's property, after payment of her debts." †

3. But a son by a woman of a different tribe, receives merely his own proper share, from his father's estate with the whole of his mother's property, if there be no daughter. ||

### ANNOTATIONS.

2. *If there be no daughter.*] But, if there be a daughter, the son does not take his mother's portion. *Subod'hini.*

3. *His own proper share.*] See Section 8.

*From his father's estate.*] BALAM-BHATTA here notices a different reading; *pitryam* in the accusative, for *pitriyat* in the ablative, and afterwards, *matrican* "maternal" for *matuk* \* "his mothers." The sense is not materially affected by these variations.

\* YAJNYAWALCYA, 2.123.

† BALLAM-BHATTA.

] YAJNYAWALCYA, 2.118. Vide supra, Sect. 3. § 8. || *Subod'hini.*



4. The same rule is propounded by MENU : "A son, born after a division, shall alone take the parental wealth." \* The term parental (*pitryam*) must be here interpreted "appertaining to both father and mother:" for it is ordained that "A son, born before partition, has no claim on the wealth of his parents; nor one, begotten after it, on that of his brother." †

5. The meaning of the text is this : one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are separated [from their older children ‡]; nor is one, born of parents separated [from their children], a proprietor of his brother's allotment.

6. Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained : "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition : those, born before it, are declared to have no right." ||

7. But the son, born subsequently to the separation, must, after the death of his father, share the goods with those who re-united themselves with the father after the partition : as directed by MENU ; "Or he shall participate with such of the brethren, as are re-united with the father." ¶

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#### ANNOTATIONS.

4. *On the wealth of his parents* ] This passage, being read differently by JIMUTA-YAHANA (Ch. 7. § 5), who writes *pitrye* "parental of paternal" instead of *pitroh* "of both parents," is not less ambiguous according to the reading, than the text cited from MENU.

5. *In the share.* ] BALAM-BHATTA censures another reading, *vibhaga* "in the division," for *bhaga* "in the share."

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\* MENU, 9, 216.

† VRIHASPATI.

‡ BALAM-BHATTA.

|| VRIHASPATI. See JIMUTA-YAHANA, Ch. 7. § 6.

¶ MENU, 9, 216.

8. When brethren have made a partition subsequently to their father's demise, how shall a share be allotted to a son born afterwards? The author replies "His allotment must absolutely be made, out of the visible estate "corrected for income and expenditure."\*

9. A share allotted for one who is born after a separation of the brethren, which took place subsequently to the death of the father, at a time when the mother's pregnancy was not manifest is "his allotment." But whence shall it be taken? The author replies, "from the visible estate" received by the brethren, "corrected for income and expenditure." Income is the daily, monthly or annual produce. Liquidation of debts contracted by the father, is expenditure. Out of the amount of property corrected by allowing for both income and expenditure, a share should be taken and allotted to the [posthumous son.]

10. The meaning here expressed is this: Including in the several shares the income thence arisen, and

#### ANNOTATIONS.

8. *Absolutely.*] The particle *va* is here employed affirmatively. The meaning is, that an allotment for them should be made only from the visible estate corrected for income and expenditure. *Subod'hini.*

9. *His allotment.*] The pronoun "his" refers to the son born after partition. *Subod'hini.*

*Corrected for income and expenditure.*] If agriculture or the like have been practised by the brethren with their several shares after separation, the gain is "income." The payment of the father's debts, the support of their own families, and similar disbursements constitute "expenditure." Counting the income in the shares, and deducting the expenditure from the allotments, as much as may be in each instance proper, should be taken from each portion, and an allotment be thus adjusted for a pregnancy which existed at the moment of the father's decease, as well as at the time of the partition, though not then manifest. *Subod'hini.*

\* 10. *Including in the several shares, &c.*] It is the patrimony though divided, as much as when undivided. Since then the

\* YAJNYAWALKYA, 2. 123.

subtracting the father's debts a small part should be taken from the remainder of the shares respectively, and an allotment, equal to their own portions, should be thus formed for the [posthumous] son born after partition.

11. This must be understood to be likewise applicable in the case of a nephew, who is born after the separation of the brethren; the pregnancy of the brother's widow, who was yet childless, not having been manifest at the time of the partition.

12. But, if she were evidently pregnant, the distribution should be made, after awaiting her delivery; as VASISHTHA directs, "Partition of heritage [takes place] among brothers [having waited] until the delivery of such of the women, as are childless [but pregnant]."\* This text should be interpreted, 'having waited until the delivery of the women who are pregnant.'

#### ANNOTATIONS

offspring, though yet in the mother's womb, is entitled to a share of the father's goods, as being his issue, therefore that offspring is entitled to participate in the gain arising out of the patrimony. Here again, if it be a male child, he has a right to an equal share [with others of the same class]. But, if a female child, she participates for a quarter of the share due to a brother of the same rank with herself. This, which will be subsequently explained, should be here understood. *Sabod'hini*.

11. *Who was yet childless* ] This is according to the reading and interpretation followed by BALAM-BHATTA. No notices, however, another reading, (*aprajasya* instead of *aprajasi*) which connects the epithet of "childless" with the brother.

12. *Such of the women as are childless but pregnant.* ] VACHESPATI-MISRA connects the word "women" (or 'wives') with the term "brothers." The *Calpataru*, and other compilations, also understand the wives of brothers to be meant; but in the *Smṛti-chandrika* the passage is interpreted as relating to the widows of the father. All concur in explaining it as meant of pregnant widows.

*This text should be interpreted.* ] The most natural construction

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\* The first part of this passage corresponds with a text of VASISHTHA's institutes (17. 36.) ; but the sequel of it is not to be found in that work.

13. It has been stated, that the son, born after partition, takes the whole of his father's goods and of his mother's.\* But if the father, or the mother, affectionately bestow ornaments or other presents on a separated son, that gift must not be resisted by the son born after partition; or, if actually given, must not be resumed. So the author declares: "But effects, which have been given by the father, or by the mother, belong to him on whom they were bestowed."†

14. What is given (whether ornaments or other effects,) by the father and by the mother, being separated from their children, to a son already separated, belongs exclusively to him; and does not become the property of the son born after the partition.

15. By parity of reason, what was given to any one, before the separation, appertains solely to him.

#### ANNOTATIONS.

of the original text is 'Partition of heritage is among brothers and women who are childless; until the birth of issue.' The author of the *Calpataru* and *Chintamani* follow that interpretation, and conclude that 'a share should be set apart for the widow who is likely to have issue (being supposed pregnant): and, when she is delivered, the share is assigned to her son, if she bear male issue; but, if a son be not born, the share goes to the brethron, and the woman shall have a maintenance.' The author of the *Smṛiti-chandreea* acknowledges that to be the natural construction of the words; but rejects the consequent interpretation, because it contains a contradiction, and because widows are not entitled to participate as heirs. He expounds the text, nearly as it is explained in the *Mitacshara*, viz., 'Among brothers, who have continued to live together, until the delivery of the childless but pregnant widow, partition of heritage takes place after the birth of the issue, when its sex is known; and does not take place immediately after the obsequies.' VIŚVĀSWARA-BHATTA, in the *Madana-Parījata*, exhibits a similar interpretation; 'Partition takes place after awaiting the delivery of widows who are evidently pregnant.'

\* Vide supra. § 1.—§ 7. † YAJÑYAWALKYA, 2 124.

16. So, among brethren, dividing the allotment of their parents who were separated from them, after the demise of those parents, (as may be done by the brothers, if there be no son born subsequently to the original partition;) what had been given by the father and mother to each of them, belongs severally to each, and is shared by no other. This must be understood.

## SECTION VII.

*Shares allotted to provide for widows and for the nuptials of unmarried daughters.—The initiation of uninitiated brothers defrayed out of the joint funds.*

1. When a distribution is made during the life of the father, the participation of his wives equally with his sons, has been directed. ("If he make the allotments equal, his wives must be rendered partakers of like portions."\*) The author now proceeds to declare their equal participation, when the separation takes place after the demise of the father: "Of heirs dividing after the death of the father, let the mother also take an equal share."†

2. Of heirs separating after the decease of the father, the mother shall take a share equal to that of a son; provided no separate property had been given to her. But, if any had been received by her, she is entitled to half a share, as will be explained.‡

3. If any of the brethren be uninitiated, when the father dies, who is competent to complete their initiation? The author replies: 'Uninitiated brothers

### ANNOTATIONS.

2. *Provided no separate property had been given.*] Peculiar property of a woman (*Stridhana*.) Vide C. 2. Sect. 11. § 1.

3. *Initiation.*] *Sanskara*; a succession of religious rites commencing on the pregnancy of the mother and terminating with the investiture of the sacerdotal thread, or with the return of the student to his family and finally his marriage.

\* Section 2. § 8. † *Yajñavalkya*, 2. 124. ‡ Vide C. 2. Sect. 11. § 34.

should be initiated by those, for whom the ceremonies have been already completed." \*

4. By the brethren, who make a partition after the decease of their father, the uninitiated brothers should be initiated at the charge of the whole estate.

5. In regard to unmarried sisters, the author states a different rule : " But sisters should be disposed of in marriage, giving them as an allotment, the fourth part of a brother's own share," †

6. The purport of the passage is this : Sisters also, who are not already married, must be disposed

#### ANNOTATIONS.

4. *By the brethren who make a partition, &c.]* By such, for whom all initiatory ceremonies, including marriage, have been completed. BALAM-BHATTA.

*After the decease of their father.]* In like manner, while the father is living but disqualified by degradation from his tribe or other incapacity, if the brethren be themselves the persons who make the partition, the same rule must be understood in regard to the initiation of brothers at the charge of the common stock. BALAM-BHATTA.

6. *The purport of the passage is this.]* As commentators disagree in their interpretation of the text, and a subtle difficulty does arise, the author proceeds to show that his own exposition, and no other, conveys the real sense of the passage. Taking the phrase " the uninitiated should be initiated " as here understood from the preceding sentence (§ 3), he expounds the text : ' Sisters also, who are not already married, &c. '

Some thus interpret the words " own share. " ' After assigning ' as many shares as there are brothers, a quarter part should be given ' to a sister, out of their several allotments : so that, if there ' be two or more sisters, a quarter of every share must be given ' to each of them. '

But others thus expound these terms : ' Deducting a quarter from ' each of their shares, the brothers should give that to a sister. If

\* YAJNYAWALKYA, 2. 125.

† YAJNYAWALKYA, 2. 125.

of, in marriage, by the brethren, contributing a fourth part out of their own allotments. Hence it appears, that daughters, also participate after the death of their father. Here, in saying "of a brother's own share," the meaning is not, that a fourth part shall be deducted out of the portions allotted to each brother, and shall be so contributed; but that the girl shall be allowed to participate for a quarter of such a share as would be assignable to a brother of the same rank with herself. The sense expressed is this: if the maiden be daughter of a *Brahmani*, she has a quarter of so much as is the amount of an allotment for a son by a *Brahmani* wife.

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#### ANNOTATIONS.

'there be two or more sisters, they and their brothers shall respectively take the same subtracted share [and residue] and no separate deduction shall be made [for each.]'

Both interpretations are unsuitable: for, according to the first, if there be one brother and seven or eight sisters; \* nothing will remain for the brother, if a quarter must be given to each sister; or, if there be one sister and many brothers, the sister has a greater allotment than a brother, if a quarter must be given to her by each of her brothers, and this is inconsistent with a text, which indicates, that a daughter should have less than a son.

Under the second exposition, if there be one sister and numerous brothers, the same objection arises, which was before stated: or, in the case of one brother and seven or eight sisters, suppose the amount of brother's share to be a *nushe*, the quarter of that is very inconsiderable, and the allotment of shares out of it is still more trifling. the terms of the text "giving them, as an allotment, the fourth part," (§ 5) would be impertinent; or admitting that the precept is observed, still there would be an inconsistency.

But, according to our method, since each sister has exactly a quarter of a share, there is nothing contradictory to the terms of the text "a fourth part" (§ 5). *Subod'hina*.

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\* If there be four sisters, nothing will remain for the brother, if there be a greater number, the allotment of a quarter to each is impossible. C.

7. For example, if a certain person had only a *Brahmani* wife, and leaves one son and one daughter; the whole paternal estate should be divided into two parts, and one such part be sub-divided into four: and, the quarter being given to the girl, the remainder shall be taken by the son. Or, if there be two sons and one daughter, the whole of the father's estate should be divided into three parts; and one such part be sub-divided into four: and, the quarter having been given to the girl, the remainder shall be shared by the sons. But, if there be one son and two daughters, the father's property should be divided into thirds, and two shares be severally sub-divided into quarters: then, having given two [quarter] shares to the girls, the son shall take the whole of the residue. It must be similarly understood in any case of an equal or unequal number of brothers and sisters alike in rank.

8. But if there be one son of a *Brahmani* wife and one daughter by a *Cshatriya* woman, the paternal estate should be divided into seven parts: and the three parts, which would be assignable to the son of a *Cshatriya* woman must be subdivided by four; then, giving such fourth part to the daughter of the *Cshatriya* wife, the son of the *Brahmani* shall take the residue.

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#### ANNOTATIONS.

7. *Divided into two parts, and one such part . . . into four.*] If the text were not so explicit, it might have been rather concluded, that the estate should be divided into five parts; one for the sister, and four for the brother, which would be exactly an allotment of a quarter of the amount of a brother's share to a sister. But, according to the distribution exemplified in the text, the sister receives one quarter of that which she would have received, had she been male instead of female. It is, however, in the instance first stated, a seventh only of what her brother actually reserves for himself.

This is consonant to MED'HATITH'S interpretation of a parallel passage of MENU;\* where he observes, that 'if the maiden sisters be numerous, the portions are to be adjusted at the fourth part of an allotment for a brother of the same class: thus the meaning is, let the son take three parts, and let the damsel take the fourth.'

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\* Vide infra. § 9.



Or, if there be two sons of the *Brahmani* and one daughter by the *Oshatriya* wife, the father's estate shall be divided into eleven parts; and three parts, which would be assignable to a son by a *Oshatriya* wife, must be subdivided by four: having given such quarter share to the daughter of the *Oshatriya*, the two sons of the *Brahmani* shall share and take the whole of the remainder. Thus the mode of distribution may be inferred in any instance of an equal or unequal number of brothers and sisters dissimilar in rank.

9. Nor is it right to interpret the terms of the text ("giving the fourth part," § 5) as signifying 'giving money sufficient for her marriage,' by considering the word "fourth" as indefinite. For that contradicts the text of MENU "To the maiden sisters, let their brothers give portions out of their own allotments respectively: to each the fourth part of the appropriate share; and they, who refuse to give it, shall be degraded." \*

10. The sense of this passage is as follows: Brothers, of the sacerdotal and other tribes, should give to their sister belonging to the same tribes, portions out of their own allotments; that is, out of the shares ordained for persons of their own rank, as subsequently explained.† They should give to each sister a quarter of their own respective allotments. It is not meant, that a quarter should be deducted from the share of each and

#### ANNOTATIONS.

9. *For her marriage.*] *Sanscara* (§ 3) signifies, in this instance, marriage: since the previous ceremonies are not performed for females, but only for male children. *Subod'hini*, &c.

"*Out of their own allotments respectively.*" ] A difference in reading of this passage is remarked in the notes on JIMUTA-VAHANA.—(C. 3. Sect. 2. § 36). A further variation occurs in the commentary by MED'HATITHI, who reads *Swabhyah swabhyah* "to their own sisters;" that is, 'sisters of their own classes respectively.'

"*To each the fourth part of the appropriate share.*" ] This part of the text is understood differently by JIMUTA-VAHANA. C. 3. Sect. 2. § 36.

\* MENU, 9, 118.

† Sect. 8. § 4.

be given to the sister. But to each maiden, should be severally allotted the quarter of a share ordained for a son of the same class. The mode of adjusting the division when the rank is dissimilar and the number unequal, has been stated : and the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin : " They who refuse to give it, shall be degraded." (§ 9.)

11. If it be alleged, that, here also, the mention of a quarter is indeterminate, and the allotment of property sufficient to defray the expenses of the nuptials is all which is meant to be expressed : the answer is, no ; for there is not any proof, that the allotment of a quarter of a share is indefinite in both codes ; and the withholding of it is pronounced to be a sin.

12. As for what is objected by some, that a sister, who has many brothers, would be greatly enriched, if the allotment of a [fourth \*] part were positively meant : and that a brother, who has many sisters, would be entirely deprived of wealth ; the consequence is obviated in the manner before explained : † it is not here directed that a quarter shall be deducted out of the brother's own share and given to his sister ; whence any such consequence should arise.

13. Hence the interpretation of MED'HATIT'HI who has no compeer, as well as of other writers, who concur with him, is square and accurate ; not that of BHARUCHI.

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#### ANNOTATIONS.

11. *In both codes.*] In the text of YAJNYAWALKYA and in that of MENU. *Subod'hini.*

[*pronounced to be a sin.*] In MENU's text. (§ 9). BALAM-BHATTA.

13. *Who has no compeer.*] Who is independent of control. BALAM-BHATTA.

This commentator treats *Asahaya* as an epithet of the author next named (MED'HATIT'HI.) The word occurs, however, as a proper name in the *Vivadaratnacura*, in commenting on a passage of MENU (9. 165.) The meaning may be that 'the opinion of ASAHAYA, MED'HATIT'HI, and the rest is accurate : not that of BHARUCHI.'

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\* BALAM-BHATTA.

† § 6.

14. Therefore, after the decease of the father, an unmarried daughter participates in the inheritance. But, before his demise, she obtains that only, whatever it be, which her father gives ; since there is no special precept respecting this case. Thus all is unexceptionable.

## SECTION VIII.

### *Shares of Sons belonging to different tribes.*

1. The adjustment of a distribution among brothers alike in rank, whether made with each other, or with their father, has been propounded in preceding passages ("When the father makes a partition, &c." \*). The author now describes partition among brethren dissimilar in class : "The sons of a *Brahmana*, in the several tribes, have four shares or three, or two, or one ; the children of a *Cshatriya* have three portions, or two or one ; and those of a *Vaisya* take two parts, or one."†

2. Under the sanction of the law,‡ instances do occur of a *Brahmana* having four wives ; a *Cshatriya*, three ; *Vaisya* two : but a *Sudra* one. In such cases, the sons of a *Brahmana* born to him by women of the several tribes, shall have four shares, three, two, or one, in the order of these tribes.

3. The several tribes (*varnasas*)] Women of the different classes, the sacerdotal and the rest, here signified by the word tribe (*varna*). The termination *sas*, subjoined to noun in the singular number and locative or

### ANNOTATIONS.

MED'HATTI'HI is a celebrated commentator on MENU : and his exposition of MENU's text (§ 9) agrees with the author's explanation of YAJNYAWALCYA'S (§ 5.)

BEARUCHI, an ancient author, probably maintained the opinion and interpretation which are refuted in the present Section.

2. *Under the sanction of the law.*] The initial words of a passage of YAJNYAWALCYA (1. 57) are cited in the text, for the sanction of the practice here noticed.

\* Section 2. § 1.

† YAJNYAWALCYA, 2. 126.

‡ YAJNYAWALCYA, 1. 57.

other case, bears a distributive sense, conformably with the grammatical rule.\*

4. The meaning here expressed is this: The sons of a *Brahmana*, by a *Brahmahni* woman, take four shares apiece: his sons by a *Cshatriya* wife, receive three shares; by a *Vaisya*, woman, two; by a *Sudra*, one.

5. The sons of a *Cshatriya*, born to him by women of the several tribes, (for that is here understood,) have three shares, or two, or one, in the order of the tribes: that is, the sons of a *Cshatriya* man, by a *Cshatriya* woman, takes three shares each; by a *Vaisya* woman, two; by a *Sudra* wife, one.

6. The sons of a *Vaisya* by women of the several tribes, (for here, again, the same term is understood,) have two shares, or one, in the order of the classes: that is, the sons of a *Vaisya* man, by a *Vaisya* woman, take two shares apiece; by a *Sudra* woman, one.

7. Since a man of the servile tribe cannot have a son of a different class from his own, because one wife only is allowed to him, (for "a *Sudra* woman only must be the wife of a *Sudra* man," ) † partition among his children takes place in the manner before-mentioned.

8. Although no restriction be specified in the text (§ I), it must be understood to relate to property other than land obtained by the acceptance of a gift. For it is declared [ by VRIHASPATI ‡ ] "Land obtained by acceptance of donation, must not be given to the son of a "*Cshatriya* or other wife of inferior tribe: even though "his father give it to him, the son of the *Brahmani* may "resume it, when his father is dead."

#### ANNOTATIONS.

3. *Conformably with the grammatical rule.*] The author quotes a rule of grammar. (PANINI, 5. 4. 43.)

7. *In the manner before-mentioned.*] As directed by the texts above cited. (YAJNYAWALKYA, 2. 115 and 118. Vide Sect. 2 and 3.) *Subod'hini*.

\* PANINI. 5, 4, 43.

† MENU, 3. 13.

‡ BALAM-BHATTA supplies the author's name.

9. Since acceptance of donation is here expressly stated, land obtained by purchase or similar means appertains also to the son of a *Cshatriya* or other inferior woman. For the son by a *Sudra* woman is specially excepted ("The son, begotten on a *Sudri* woman by any man, of a twice-born class, is not entitled to a share of land."\*) Now, if land acquired by purchase and similar means did not belong to the sons of a *Cshatriya* or *Vaisya* wife, the special exception of a son by a *Sudra* woman would be impertinent.

10. But the following text "The son of a *Brahmana*, or a *Vaisya*, by a woman of the servile class, shall not share the inheritance: whatever his father may give him, let that only be his property:"† relates to the case where something, however inconsiderable, has been given by the father, in his life-time, to his son by a *Sudra* woman. But, if no affectionate gift have been bestowed on him by his father, he participates for a single share [of the moveables]. Thus there is nothing contradictory.

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9. *Begotten on a Sudri woman.*] *Sudri* does not here bear its regular signification of 'wife of a *Sudra* man,' but intends a wife of the regenerate man, being a *Sudra* woman. *Subod'hini* and *BALAM-BHATTA*.

*The special exception of a son by a Sudra woman would be impertinent.*] Since the son of the *Sudra* is specifically excepted, it follows that the sons of the *Cshatriya* wife and those of the *Vaisya* do participate. *Subod'hini*.

10. *Where something . . . has been given.*] Where an affectionate gift has been bestowed. In some copies, the reading is *no* : (*prasada-dattam* in place of *pradattam*.) *BALAM-BHATTA*.

\* This also is a passage of *VRIHASPATI*. See *JIMUTA-VAHANA* Ch. 9. § 22.

† *MENU*, 6. 155.

## SECTION IX.

*Distribution of effects discovered after partition.*

1. Something is here added respecting the residue after a general distribution of the estate. "Effects, which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule."\*

2. What had been withheld by coparceners from each other, and was not known at the time of dividing the aggregate estate, they shall divide in equal proportions, when it is discovered after the *partimony*. Such is the settled rule or maxim of the law. *fcc*

3. Here, by saying "in equal shares" the author forbids partition with deductions. By saying "let them divide," he shows, that the goods shall not be taken exclusively by the person who discovers them.

4. Since the text is thus significant, it does not imply, that no offence is committed by embezzling the common property.

5. Is it not shown by MENU to be an offence on the part of the eldest brother, if he appropriate to himself common property; and not so, on the part of younger brothers? "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [additional] share, and be chastised by the king."†

6. That inference is not correct; for, by pronouncing such conduct criminal in an elder brother, who is independent and represents the father, it is more assuredly shown (by the argument exemplified in the loaf and staff)

## ANNOTATIONS.

6. *By the argument exemplified in the loaf and staff.*] If a staff to which a loaf is attached, be taken away by thieves, it is inferred, that assuredly the loaf also has been stolen by them. † So in the case under consideration, if the eldest, who is independent and represents the father, be criminal for withholding the goods, the same may surely be affirmed concerning the rest, if they do so. *Subod'hini.*

\* YAJNYAWALKYA, 2, 127.

† MENU, 9, 213.

‡ See JIMUTA-VAHANA, 2, 25, & 3, 1, 15.

to be criminal in younger brothers, who are subject to the control of the eldest and hold the place of sons. Accordingly it is declared [in the *Veda* \*] to be an offence without exception or distinction : " Him, indeed, who deprives an heir of his right share, he does certainly destroy ; or, if he destroy not him, he destroys his son, or else his grandson." †

7. Whoever debars, or excludes, from participation, an heir, or person entitled to a share, and does not yield to him his due allotment ; he, being thus debarred of his share, destroys or annihilates that person who so debars him of his right : or, if he do not immediately destroy him, he destroys his son or his grandson.

8. It is thus pronounced to be criminal in any person to withhold common property, without any distinction of eldest [ or youngest. ]

9. It is argued, that blame is not incurred by one who takes the goods, thinking them his own, under the notion that the common property appertains also to him.

10. That is wrong. He does incur blame : for, though he took it thinking it his own ; still he has taken the property of another person, contrary to the injunction which forbids his so doing.

11. As in answer to a proposed solution of a difficulty ' If an oblation of green kidney beans ‡ be not procurable, and black kidney beans || be used in their stead, by reason of the resemblance, the maxim, which prohibits the employment of these in sacrifices, is not applicable, because they

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11. *As in answer to a proposed solution.*] The author here adduces an example of reasoning from *Mimansa*, in the 6th book (*Ad'hyaya*.) 3rd section (*pada*) and 6th topic (*ad'hicarana*.) *Subod'hini*.

The black kidney bean, with certain other kinds of grain, is declared by a passage of the *Veda* unfit to be used at sacrifices. An oblation of green kidney beans, by another passage of the same, is directed to be made on certain occasions. If then the green sort be not procurable, may the black kind be used in its stead ? The solution

\* BALAM-BHATTA.

† A passage of the *Veda*, as observed by BALAM-BHATTA.

‡ *Mudga* ; *Phaseolus Mungo* ; green kidney beans.

|| *Mudga* : *Phaseolus Max*, *v. radiatus* ; black kidney beans.

were used by mistake for ground particles of green kidney beans; it is on the contrary maintained, as the right opinion, that, 'although the ground particles of green kidney beans be taken' as being unforbidden, still the ground particles of black kidney beans are also actually employed: and the prohibitory command is consequently applicable in this case.'

12. Therefore it is established, both from the letter of the law and from reasoning, that an offence is committed by taking common property.

## SECTION X.

### *Rights of the Dwyamushyayana or son of two fathers.*

1. Intending to propound a special allotment for the *Dwyamushyayana* (or son of two fathers,) the author previously describes that relation. 'A son, begotten by one, who has no male issue, on the wife of another man, under a legal appointment, is lawfully heir, and giver of funeral oblations, to both fathers.' \*

2. A son, procreated by the husband's brother or other person (having no male issue), on the wife of another man,

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first proposed is, that the black sort may be substituted for the green kind in like manner as wild rice is used in place of the cultivated sort and, in answer to the argument drawn from the special prohibition it is pretended, that the prohibition holds against the use of the black kidney bean as such, and not against its use when ground particles of this and other sorts are taken with particles of green kidney beans as being unforbidden. But the correct and demonstrated opinion is, that the black kind is altogether unfit to be used at sacrifices, being expressly prohibited: its particles, therefore, although intermixed with other sorts, are to be avoided; and for this reason they must not be used as a substitute for the other kind. *Subod'hini* and *BALAM-BHATTA*.

1. *Dwyamushyayana or son of two fathers.*] As here described, the *Dwyamushyayana* is restricted to one description of adoptive

\* YAJÑAWALKYA, 2. 128.



with authority from venerable persons, in the manner before ordained, is heir of both the natural father and the wife's husband: he is successor to their estates, and giver of oblations to them, according to law.

3. The meaning of this is as follows.—If the husband's brother, or other person, duly authorized, and being himself destitute of male issue, proceed to an intercourse with the wife of a childless man, for the sake of raising issue both for himself and for the other, the son, whom he so begets, is the child of two fathers and denominated *Dwyamushyayana*. He is heir to both, and offers funeral oblations to their manes.

4. But, if one, who has male issue, being so authorized, have intercourse with the wife for the sake of raising up issue to her husband only, the child, so begotten by him, is son of the husband, not of the natural father and, by this restriction, he is not heir of his natural father, nor qualified to present funeral oblations to his manes. It is so declared by MENU. "The owners of the seed and of the soil may be considered as joint owners of the crop, which they agree by special compact, in consideration of the seed, to divide between them."

5. By special compact ] When the field is delivered by the owner of the soil to the owner of the seed, on an agreement in this form, "let the crop, which will be here produced, belong to us both," then the owners both of the soil and of the seed are considered by mighty sages as sharers or proprietors of the crop produced in that ground.

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son, <sup>1</sup> *Cshetrāja* or son of the wife but the term is applicable to any adopted son retaining his filial relation to his natural father with his acquired relation to his adoptive parent. See Sect 11 § 32.

2. *In the manner before ordained* ] The initial words of another passage of *YATYAWALCYA* are here cited. It is as follows.—"Let the husband's brother, or a kinsman near or remote, having been authorized by venerable persons, and being anointed with butter, approach the childless wife at proper seasons, until she

\* MENU, 9 53.

6. So [the same author.] "Unless there be a special agreement between the owners of the land and of the seed, the fruit belongs clearly to the land-owner ; for the soil is more important than the seed." \*

7. But produce, raised in another's ground, without stipulating for the crop, or without a special agreement that it shall belong to both, appertains to the owner of the ground : for the receptacle is more important than the seed ; as is observed in the case of cows, mares, and the rest.

8. Here, however, the commission for raising up issue is relative to a woman who was only betrothed, since any other such appointment is forbidden by *ML IV*. For after thus premising a commission, "On failure of issue, the desired offspring may be procured, either by his brother or some other kinsman, on the wife who has been duly authorized : anointed with liquid butter, silent, in the night, let the kinsman, thus appointed, beget one son; but a second by no means, on the widow [or childless wife ;]"† *MENU* has himself prohibited the practice : "By regenerate men, no widow must be authorized to conceive by any other : for they, who authorize her to conceive by any other, violate the primeval law. Such a commission is nowhere mentioned in the nuptial prayers ; nor is the marriage of widows noticed in laws concerning wedlock. This practise,

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become pregnant He, who approaches her in any other mode, is degraded from his tribe. A child, begotten in that mode, is the husband's son, denominated (*cshetaja*) son of the wife.' †

8. *The commission . . . is relative to a woman who was only betrothed.* ] The commentators, *BALAM-BHATTA*, dissents from this doctrine : and cites passages of law to show, that, after troth verbally plighted, should the husband die before the actual celebration of the marriage, the damsel is at the disposal of her father to be given in marriage to another husband. It is unnecessary to go into his explanation of the passages cited in the text, in another opinion.

\* *MENU*, 9. 53. † *MENU*, 9. 59-60. ‡ *YAJNYAWALKYA*, 1. 69--70.

fit only for cattle, and reprehended by learned priests, was introduced among men, while VENA had sovereign sway. He, possessing the whole earth, and therefore eminent among royal saints, gave rise to a confusion of tribes, when his intellect was overcome by passion. Since his time, the virtuous censure that man, who through delusion of mind, authorizes a widow to have intercourse for the sake of progeny," \*

9. Nor is an option to be assumed from the [contrast of] precept and prohibition. Since they, who authorize the practice, are expressly censured: and disloyalty is strongly reprobated in speaking of the duties of women; and continence is no less praised. This, MENU has shown: "Let the faithful wife emaciate her body by living voluntarily on pure flowers, roots, and fruit; but let her not, when her lord is deceased, even pronounce the name of another man. Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue, which have been followed by such women, as were devoted to one only husband. Many thousands of *Brahmanas*, having avoided sensuality from their early youth, and having left no issue in their families, have ascended nevertheless to heaven, and, like those abstemious men a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity: but a widow, who, from a wish to bear children, slights her deceased husband, brings disgrace on herself here below, and shall be excluded from the abode of her lord."† Thus the legislator has forbidden the recourse of a widow or wife to another man, even for the sake of progeny. Therefore it is not right to deduce an option from the injunction contrasted with the prohibition.

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9. *It is not right to deduce an option.*] For an option is inferred in the case of equal things: but here a censure is passed on those persons, who authorize such a practice, and none upon those who forbid it. The injunction and the prohibition are consequently not equal; and therefore an option is not inferred *Subodhini*.

\* MENU, 9, 64—68.

† MENU 5, 157-161.

10. The authorizing of a woman sanctified by marriage, [to raise up issue to her husband by another man,] being thus prohibited, what then is a lawful commission [to raise up issue?] The same author explains it: "The damsel, whose husband shall die after troth verbally plighted, his brother shall take in marriage according to this rule: having espoused her in due form, she being clad in a white robe, and pure in her conduct, let him privately approach her once in each proper season, until issue be had."\*

11. It appears from this passage, that he, to whom a damsel was verbally given, is her husband without a formal acceptance on his part. If he die, his own brother of the whole blood, whether elder or younger, shall espouse or take in marriage the widow. "In due form," or as directed by law, "having espoused" or wedded her, and "according to this rule," namely, with an inunction of clarified butter and with restraint of voice, &c., let him "privately" or in secret, "approach her, clad in a white robe, and pure in her conduct," that is, restraining her mind, speech and gesture, "once" at a time, until pregnancy ensue.

12. These espousals are nominal, and a mere part of the form in which an authorized widow shall be approached; like the inunction of clarified butter, and so forth. They do not indicate her becoming the wedded wife of her brother-in-law.

13. Therefore the offspring, produced by that intercourse, appertains to the original husband, not to the brother-in-law. But, by special agreement, the issue may belong to both.

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12. *These espousals are nominal.*] The notion is this: as an inunction of clarified butter, and other observances, are prescribed as mere forms in approaching an authorized widow; so these espousals are a mere part of that intercourse, and not a principal and substantive act, whence the parties might be supposed to become a married couple. *Subod'hini* and *BALAM-BHATTA*.

For the woman cannot become a lawful wedded wife, being twice-married. *BALAM-BHATTA*.

13. *Therefore the offspring, &c.*] The child is not a legitimate son (*aurasa*) of both parents; but is (*cahétraja*) son of the soil or

## SECTION XI.

*Sons by birth and by adoption.*

1. A distribution of shares, among sons equal or unequal in class, has been explained. Next, intending to show the rule of succession among sons principal and secondary, the author previously describes them "The legitimate son is procreated on the lawful wedded wife. Equal to him is the son of an appointed daughter. The son of the wife is one begotten on a wife by a kinsman of her husband, or by some other relative. One, secretly produced in the house, is a son of hidden origin. A damsel's child is one born of an unmarried woman. He is considered as son of his maternal grandsire. A child, begotten on a woman whose [first] marriage had not been consummated, or on one who had been deflowered [before marriage], is called the son of a twice-married woman. He, whom his father or his mother give for adoption, shall be considered as a son given. A son bought is one who was sold by his father and mother. A son made is one adopted by the man himself. One, who gives himself, is self-given. A child accepted, while yet in the womb, is

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wife, and appertains to the husband or owner of the soil, provided no agreement were made to this effect; 'the offspring, here produced, shall belong to us both' But if such a stipulation exists, he is son of both. *Subod'hini* and *BALAM-BHATTA*.

He is not legitimate son (*aurasa*) of the natural father, but similar to a legitimate son, as will be made evident in the sequel.\*  
*BALAM-BHATTA*.

1. *Son of his maternal grandsire* ] In the numerous quotations of this passage, some read *sutah* "son," others *smritah* "called," and others again *matah* "considered" The sense is not materially affected by these differences; as either term, being not expressed, must be understood.

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\* Vide Sect. 11 § 4.

one received with a bride. He, who is taken for adoption, having been forsaken by his parents, is a deserted son." \*

2. The issue of the breast (*uras*) is a legitimate son (*aurasa*). He is one born of a legal wife. A woman of equal tribe, espoused in lawful wedlock, is a legal wife ; and a son, begotten [by her husband †] on her, is a true and legitimate son ; and is chief in rank.

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2. *A son, begotten on a woman of equal tribe.* In fact it is not to be so understood. For it contradicts the author's own doctrine, since he includes the *Murd'havasieta* and others, born in the direct order of the tribes, among legitimate issue (§ 41) They are not sons begotten on a woman of equal tribe : and, if issue by women of different tribes be not deemed legitimate, being considered as born of wives whom it was not lawful to marry, then it might follow that other persons would take the heritage, although such son existed. Hence the mention of a wife equal by tribe intends only the pr ferableness [of her or her offspring :] and the restrictions that she be a lawful wife, excludes the *chetraya* or issue of the soil, and the rest. *Vīramitrodaya*.

The son by a woman of equal tribe espoused in any of the irregular forms of marriage (*Asura*, &c) is a legitimate son : and the sons of a *Brahmana*, by wives espoused in the direct order of the classes (*Cshatriya* &c,) denominated the *Murd'havasieta* the *Ambashēha*, and the *Parasava* or *Nishada* : and the sons of a *Cshatriya* by the wives of the *Vaisya* or *Sudra* tribe, named the *Mahishya* and the *Ugra* : and the son of a *Vaisya* by a *Sudra* woman, called the *Carana* ; are all legitimate sons. VISWESWARA-BHATIA in the *Madana-Parijata*.

By the term "lawful" is excluded a woman espoused by one to whom such marriage was not permitted : therefore the sons by women of superior tribe are not legitimate ; and, for this purpose, the word "lawful" has been introduced into the text (§ 1) A lawful wife for a man of a regenerate tribe is a woman of a regenerate

\* YAINYAWALKYA, 2. 129—133.

† BALAM-BHATTA directs this to be supplied in conformity with passages of VISHNU (15. 2 and MENU 9. 166)

3. The son of an appointed daughter (*putrica-putra*) is equal to him ; that is equal to the legitimate son. The term signifies son of a daughter. Accordingly he is equal to the legitimate son : as described by VASISHT'HA : " This damsel, who has no brother, I will give unto thee, decked with ornaments : the son, who may be born of her, shall be my son. " \* Or that term may signify a daughter

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tribe ; and, for a *Sudra* man, a *Sudra* woman. For want of a wife of preferable description, one analogous is allowed. Consequently it is not indispensable, that the wife be of the preferable description. Even a *Sudra* woman may be the wife of a regenerate man ; and her issue is legitimate, as will be shown. BALAM-BEATTA.

3. *Equal to the legitimate son.* ] The daughter appointed to be a son, and the son of an appointed daughter, are either of them equal to the legitimate son. VISWESWARA in the *Madana Parijata*.

Since the son of an appointed daughter is son of legitimate female issue, therefore he is equal to a legitimate son : but he is not literally a legitimate son, being one remove distant. VISWESWARA in the *Subod'hini*.

*Or that term may signify, &c.* ] It may signify a daughter who becomes by appointment a son : that is, who is put in place of a son. Although she be legitimate, yet being female, she is merely equal to a son. *Viramitrodaya*.

" Equal to him," equal to the legitimate son, is the *putrica-putra* or daughter appointed to be a son : for since all the terms of the definition of a legitimate son excepting sex, are applicable to her, she is similar to him. APARARCA.

The *Putrica-putra* is of four descriptions. The first is the daughter appointed to be a son. She is so by a stipulation to that effect. The next is her son. He obtains of course the name of ' son of an appointed daughter,' without any special compact. This distinction, however, occurs: he is not in place of a son, but in place of a son's son, and is a daughter's son. Accordingly he is described as a daughter's son in the text of SANC'HA and LIU'HITA. " An appointed daughter is like unto a son ; as PRACHETASA has declared : her offspring is termed son of an appointed daughter : he offers funeral oblations to the maternal grandfathers and to the

becoming by special appointment a son. Still she is only similar to a legitimate son ; for she derives more from the mother than from the father. Accordingly she is mentioned by VASISHT'HA as a son, but as third in rank: "The appointed daughter is considered to be the third description of sons." \*

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paternal grandsires. There is no difference between a son's son and a daughter's son in respect of benefits conferred." The third description of son of an appointed daughter is the child born of a daughter who was given in marriage with an express stipulation in this form "the child, who shall be born of her, shall be mine for the purpose of performing my obsequies." † He appertains to his maternal grandfather as an adopted son. The fourth is a child, born of a daughter who was given in marriage with a stipulation in this form: "The child, who shall be born of her, shall perform the obsequies of both." He belongs, as a son, both to his natural grandfather and to his maternal grandfather. But, in the case where she was in thought selected for an appointed daughter, ‡ she is so with a compact, and merely by an act of the mind. HEMADRI.

The son of the appointed daughter belongs in general only to the maternal grandfather: but, by special compact, to the natural father also. Thus YAMA says: "Let the son of an appointed daughter perform the obsequies of his maternal ancestors exclusively: but if he succeed to the property of both, let him perform the obsequies of both." Accordingly this child also is denominated *dwyamushyayana* or son of two fathers. BALAM-BHATTA.

"The appointed daughter is the third description of sons." "For she, who has no brother, reverts to her male ancestors and obtains a renewed filiation." VASISHT'HA. ||

The adopted daughter is counted by VASISHT'HA as the third: not by YAJNYAWALKYA. *Subodhini*.

MITRA-MISRA reads second instead of third: against the authority of the institutes and of every compiler who has cited this passage.

\* VASISHT'HA, 17, 14. † MENU, 9, 127. ‡ MENU, 9, 136.  
|| VASISHT'HA, 17, 15.



4. The son of two fathers (*dwyamushyayana*) \* is inferior to the natural father's legitimate son, because he is produced in another's soil.

5. A child, begotten by another person, namely, by a kinsman, or by a brother of the husband, is a wife's son (*cshetraja*).

6. The son of hidden origin (*gud'haja*) is one secretly brought forth in the husband's house. By excluding the case of a child begotten by a man of inferior or superior tribe, this must be restricted to an instance where it is not ascertained who is the father, but it is certain that he must belong to the same tribe.

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4. *Is inferior to the legitimate son.*] He is similar to the son of the body. BALAM-BHATTA.

Is not the son of two fathers the offspring of his natural father? or is he then a legitimate son or one or other of the various descriptions of adoptive and secondary sons? Anticipating this question, the author says: "He is not different from him;" he is equal to a son of the body. *Subod'hini*.

The commentary last cited reads *avis'ishta* 'not different' instead of *apacrishta* 'inferior.' Both readings are noticed by BALAM-BHATTA.

5. *A child begotten by another person.....is a wife's son.*] There are two descriptions of *cshetraja* or wife's son; the first of them is son of both fathers (*dwipitrica*;) the other is adopted son of the wife's husband. *Viramitrodaya*.

A son begotten, under a formal authority, by a kinsman being of equal class, or by another relative, is a wife's son. VISWESWARA in the *Madana-Parijata*.

6. *He must belong to the same tribe.*] A child secretly conceived by a woman, in her husband's house, from a man of the same tribe, but concerning whom it is not certainly known who the individual was, is named a son of concealed origin. The ignorance as to the particular person must be the husband's, not the wife's: and the knowledge of his equality in tribe may be obtained through her; for surely she must know who he is. But, if she really do not know

\* Vide Sect. 16.

7. A damsel's child (*capina*) is the offspring of an unmarried woman by a man of equal class as (restricted in the preceding instance); and he is son of his maternal grandfather, provided she be unmarried and abide in her father's house. But, if she be married, the child becomes son of her husband. So MENU intimates: "A son, whom a damsel conceives secretly in the house of her father, is considered as the son of her husband, and denominated a damsel's son, as being born of an unmarried woman." \*

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his tribe, having been secretly violated by a stranger [in a dark night,†] then the child bears the name of a son of hidden origin, but is not so fit a son as the one before described. VISVESWARA in the *Madana-Parijata*.

In such circumstances, the child must be abandoned, say others. BALAM-BHATTA.

Since the natural father is not known, the child belongs to the same tribe with his mother. But, if there be a suspicion, that he was begotten by a man of inferior tribe, he is contemned. VACHESPATI MISRA in the *Sradd'ha Chintamani*.

A son, who is born of the wife, and concerning whom it is not certainly known who is the natural father, is adoptive son of the mother's husband, and called son of concealed origin. Being son of the adoptive father's own wife, and begotten on her by another man, he is similar to the son of the wife, and therefore described after him. APARARCA.

7. *By a man of equal class.*] As the son before described must be one begotten by a man of like tribe, so must this son also be the offspring of a man of equal class. "Damsel" does not here signify unmarried only: for, even with that import, the term is frequently used in the sense of unconnected 'with man.' But it signifies a woman with whom a regular marriage has not been consummated. BALAM-BHATTA.

The meaning of the passage of the *Mitacshara* is this: "Unmarried" signifies one, whose nuptials have not been commenced; "married," whose nuptials are begun. The affix here implies an

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\* MENU, 9, 172.

† BALAM-BHATTA.

8. The son of a woman twice-married is one begotten by a man of equal class, on a twice-married woman, whether the first marriage had or had not been consummated.

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not begun and not past. For a child begotten by a paramour alike in class, on a woman whose marriage is complete, is a son of concealed origin. *Viramitrodaya*.

The child, born of an unmarried woman, is denominated son of a damsel; and is considered by MENU and the rest as son of his maternal grandfather. Being produced in a soil which in some measure appertains to him, namely his daughter, the child is similar to the son of concealed origin, and is therefore mentioned by YAJNYAWALKYA next after him. APARARCA.

If the maternal grandfather have no male issue, then the damsel's son is deemed his son; if he have issue, then the child is son of the husband. If both be childless, he is adoptive son of both. *Parijata* cited in the *Retnacara* and *Sudd'hi-viveka*.

If either of them be destitute of male issue, the child is his son; but, if both be so, the child is son of both. BALAM-BHATTA.

So MENU intimates.] The meaning of the passage cited from MENU is as follows: a young woman, betrothed, but whose nuptials have not been completed; and who is consequently a maiden, since she is not yet become the wife of her intended husband: a son (we say) borne by such a damsel is denominated a damsel's child, and is considered as son of the bridegroom; that is, of the person by whom she is espoused. Accordingly the condition "in the house of her father" is pertinent as an explanatory phrase: for, after marriage, she inhabits the house of her husband. *Viramitrodaya*.

8. *Whether, &c.*] Whether the marriage had or had not been consummated by the first husband, and whether she have been forsaken by her husband in his lifetime or be a widow. Such is the meaning. Accordingly VISHNU so declares: "He, whom a woman, either forsaken by her husband, or a widow, and again becoming a wife by her own choice, conceived [by a second husband] is called the son of a woman twice-married." \* The child is son of the natural father: for the first husband's right to the woman is annulled by his death or relinquishment; and she has not been authorized to

\* MENU, 9, 175. Erroneously cited as a passage of VISHNU.

9. He, who is given by his mother with her husband's consent, while her husband is absent, [or

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raise up issue to him ; and she takes a second husband solely by her own choice. BALAM-BHATTA.

There are two descriptions of twice-married women : the first is a woman whose marriage has not been consummated, but only contracted, and who is espoused by another man. The other is a woman who has been blemished by intercourse with a man, before marriage. The offspring of such a woman is (*Pauner-bhava*) son of a twice-married woman. Accordingly it is so expressed in the text. *Viramitrodaya*.

"A woman, whose marriage had not been consummated, and who is again espoused is a twice-married woman. So is she, who had previous intercourse with another man, though she be not actually married a second time." VISHNU.\*

A child begotten "on a woman, whose [first] marriage had not been consummated;" on the wife of an impotent man or the like, whether she have become a widow or not; or on his own wife "who had been enjoyed by strangers, and who is taken back, and again espoused;" the child (we say) begotten on such a woman, is called 'son by a woman twice-married.' The twice-married woman has been described in the first book [of YAJNYAWALCYA's institutes.] APARARCA.

"Whether a virgin or deflowered, she who is again espoused with solemn rites, is a twice-married woman : but she, who deserts her husband and through lust cohabits with another man of the same tribe, is a self guided woman." YAJNYAWALCYA. †

There are two descriptions of women termed *anyapurva* ‡ or previously connected with another : namely the *punerbhu* or woman twice-married, and the *swairini* or self-guided and unchaste woman. The twice-married woman also is of two descriptions; according as she has or has not been deflowered. She, who is not a virgin, is blemished by the repetition of the ceremony of marriage. But one, who deserts the husband of her youth, and through desire

\* VISHNU, 15, 8-9.

† YAJNYAWALCYA, 1. 68.

‡ Same with *parapurva*. See MENU, 5. 163.

incapable though present, \*] or [without his assent †] after her husband's decease, or who is given by his

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cohabits with another man of the same tribe, is a self-guided woman (*swairini*) *Mitacshara*. ‡

A woman, who, having been married, whether she be yet a virgin or not, is again espoused in due form by her original husband or by another, is a twice-married woman. She is so described by MENU. "If she be still a virgin, or if she left her original husband and return to him, she may again perform the marriage ceremony with her second [or, in the latter case, her original] husband." ¶ and by VASISHT'HA; she, who having deserted the husband to whom she was married in her youth, and having cohabited with others, returns to his family, is a twice-married woman. Or she, who deserts a husband impotent, degraded, or insane, and marries another husband, or does so after the death of the first, is a twice-married woman." ¶ The repetition of the nuptial ceremony constitutes her a twice-married woman. But she, who leaves her husband and through desire cohabits, without marriage, with a man of the same tribe, is a self-guided woman. APARARCA.

9. *He who is given by his mother with her husband's consent.*] VASISHT'HA says "Let not a woman either give or accept a son, unless with the assent of her husband." § He had before said "Man, produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore both his father and his mother have power to give, to sell, or to abandon their son.\*\*

Concerning the mother's authority to give away her son, when she is a widow, see a subsequent note. In regard to a widow's power of adopting a son, there is much diversity of opinions. VACHESPATI MISRA, who is followed by the *Mait'hila* school, maintains that neither a woman, nor a *Sudra*, can adopt a *dattaca* or given son; because the prescribed ceremony (§ 13) includes a sacrifice, which they are incapable of performing. This difficulty

\* BALAM-BHATTA.

‡ On YAJNYAWALKYA, 1. 68.

¶ VASISHT'HA, 17. 18—18. 19.

\*\* VASISHT'HA, 15. 1—2.

† BALAM-BHATTA.

|| MENU, 9. 176.

§ VASISHT'HA, 15. 4.

father, or by both, being of the same class with the person to whom he is given, becomes his given son (*dattaca*.) So MENU declares: "He is called a son

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may be obviated by admitting a substitute for the performance of that ceremony: and accordingly adoption by a woman, under an authority from her husband, is allowed by writers of the other schools of law. NANDA PANDITA, however, in his treatise on adoption, restricts this to the case of a woman whose husband is living since a widow cannot, he observes, have her husband's sanction to the acceptance of a son. On the other hand, BALAM-BHATTA, contends, that a woman's right of adopting, as well as of giving, a son, is common to the widow and to the wife. This likewise is the opinion of the author of the *Vyavahara-mayucha*, but while he admits, that a widow may adopt a son without her husband's previous authority, he requires, that she should have the express sanction of his kindred. Writers of the *Gaura* school, on the contrary, insist on a formal permission from the husband declared in his lifetime.

*Being of the same class with the person to whom he is given.*] Or being given to a person of the same class. The two readings, (*savar-naya* in the dative, or *savarnoyah* in the nominative,) both noticed by the commentator BALAM-BHATTA, give the same sense.

The adopted son must be of the same tribe with the giver or natural parent as well as with the adoptive parent, according to the remark of APARCA cited with approbation by NANDA-PANDITA in his treatise on adoption.

*Becomes his given son.*] The son given (*dattaca* or *dattrima*) is of two sorts; 1st simple, 2nd son of two fathers (*dyagamushayana*.) The first is one bestowed without any special compact; the last is one given under an agreement to this effect "he shall belong to us both." *Vyavahara-mayucha*.

"*Whom his father or mother gives*"] MED'HATITHI reads and interprets "whom his father and mother give;" (inserting the conjunctive particle *cha* instead of the disjunctive *va*) BALAM-BHATTA condemns that reading; and infers from the disjunctive particle and dual number in the text, that three cases are intended, viz., 1st. The mother

given (*dattima*.) whom his father or mother affectionately gives as a son, being alike (by class,) and in a time of distress; confirming the gift with water.\*

10. By specifying distress, it is intimated, that the son should not be given unless there be distress. This prohibition regards the giver (not the taker. †)

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may give her son for adoption with her husband's consent; if he be absent or incapable; and without it, if he be dead or the distress be urgent. 2nd. The father may give away his son without his wife's consent, if she be dead or insane, or otherwise incapable; but with her consent, if she reside in her own father's house. 3rd. The father and mother may conjointly give away their sons, if they be living together.

"*Whom his father or mother affectionately gives.*" Amicably: not from avarice or intimidation. In the *Vīramitrodaya* the word is expressly stated to be used adverbially; but BALAM-BHATTA considers it as an epithet of the son to be adopted, and as implying, that the adoption is not to be made against his will or without his free consent.

"*Being alike.*" This is interpreted by MED'HATITHI as signifying 'alike, not by tribe, but by qualities suitable to the family: accordingly a *Cshatriya* or a person of any other inferior class, may be the given son (*dattaca*) of a *Brahmana*.' BALAM-BHATTA and the author of the *Mayuc'ha* censure this doctrine: since every other authority concurs in restricting adoption to the instance of a person of the same tribe.

10. *By specifying distress.* "Distress" is explained in the *Pracass* cited by CHANDESWARA, 'inability [of the natural father] to maintain his offspring.' NANDA PANDITA, in his treatise on adoption, expounds it as intending the necessity for adoption arising from the want of issue. But BALAM-BHATTA rejects this, and supports the other interpretation; explaining the term as signifying 'famine or other calamity.'

*This prohibition regards the giver.* ] If he give away his son, when in no distress the blame attaches to him, not the taker. BALAM-BHATTA.

11. So an only son must not be given (nor accepted. \*) For VASISHT'HA ordains "Let no man give or accept an only son. †

12. Nor, though a numerous progeny exist, should an eldest son be given: for he chiefly fulfils the office of a son; as is shown by the following text: "By the eldest son, as soon as born, a man becomes the father of male issue." ‡

13. The mode of accepting a son for adoption is propounded by VASISHT'HA: "A person, being about to adopt a son, should take an unremote kinsman or the near relation of a kinsman, having convened his kindred and

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11. *So an only son should not be given.*] Nor should such a son be accepted. The blame attaches both to the giver and to the taker, if they do so. BALAM-BHATTA.

"*Let no man give or accept an only son.*" "For he is [destined] to continue the line of his ancestors." Such is the sequel of VASISHT'HA's text. BALAM-BHATTA.

13. *The mode of accepting a son. . . propounded by VASISHT'HA.*] RAGHUNAN DANA, in the *Uvaha-tatwa*, has quoted a passage from the *Calica-purana*, which, with the text of VASISHT'HA, || constitutes the groundwork of the law of adoption, as received by his followers. They construe the passage as an unqualified prohibition of the adoption of a youth or child whose age exceeds five years and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted as a rigid maxim by writers in other schools of law; and the authenticity of the passage itself is contested by some, and particularly by the author of the *Vyavahara-m yuc'ha*, who observes truly, that it is wanting in many copies of the *Calica-purana*. Others, allowing the text to be genuine, explain it in a sense more consonant to the general practice, which permits the adoption of a relation, if not of a stranger more advanced both in age and in progress of initiation. The following version of the passage conforms with the interpretation of it given by NANDA PANDITA in the *Dattaca-mimamsa*. "Sons given and the rest, though sprung from the seed of another,

\* BALAM-BHATTA. † VASISHT'HA, 15. 3. ‡ MENU, 9. 16.

|| VASISHT'HA, 15. 1.—7. See preceding quotations.



announced his intention to the king, and having offered a burnt offering with recitation of the holy words, in the middle of his dwelling." \*

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yet being duly initiated [by the adopter] under his own family name, become sons [of the adoptive parent.] A son, having been regularly initiated under the family name of his [natural] father, unto the ceremony of tonsure, does not become the son of another man. When indeed the ceremony of tonsure and other rites of initiation are performed [by the adopter] under his own family name, then only can sons given and the rest be considered as issue: else they are termed slaves. After their fifth year, O King, sons are not to be adopted. [But,] having taken a boy five years old, the adopter should first perform the sacrifice for male issue." †

The *Putreshī* or sacrifice for male issue, mentioned at the close of this passage, is a ceremony performed according to the instructions contained in the following text of the *Veda*: "He who is desirous of issue, should offer to fire parent of male offspring, an oblation of kneaded rice roasted upon eight potsherds; and to INDRA father of male offspring, a similar oblation of rice roasted on eleven potsherds: fire grants him progeny; INDRA renders it old.

"An unremote kinsman or the near relation of a kinsman." This very obscure passage, which is variously read and interpreted, is here translated according to the elaborate gloss of NANDA PANDITA in his treatise entitled *Dattaca mimansa*. Yet the same writer in his commentary on VISHNU (15-19), citing this passage, gives the preference to another reading (*adura-band'havam asannicrishtam eva*), which he expounds 'one whose whole kindred dwell in a near country, and one not connected by affinity.' Which of these readings he has adopted in his commentary on the *Mitacshara*, is not ascertained. From a remark in the text (§ 14.), the author himself, VIJNYANESWARA, appears to have read and understood it differently: "Should take, in the presence of his kin, one whose kinsmen are not remote." For copies of the *Mitacshara* exhibit the reading, *adura-band'havam bandhu-sannicrishta eva*. But the commentator BALAM-BHATTA seems to have read, as the *Dattaca mimansa*, *banhu-sannicrisht m* (in

\* VASISHTĀ, 15. 5.

† *Calica-purana* c. antepenult.

14. An unremote kinsman.] Thus the adoption of one very distant by country and language, is forbidden.

15. The same [ceremonial of adoption\*] should be extended to the case of sons bought, self-given, and made (as well as that of a son deserted †) for parity of reasoning requires it.

16. The son bought (*crita*) is one who was sold by his father and mother, or by either of them: excepting as before an only son or an eldest one, and

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the accusative instead of the locative;) though he explain the terms a little differently and transpose them: 'should take a kinsman nearly related (*band'hu-sannicrishtam*), as a brother's son or the like; but, on failure of such, one whose kinsmen are not remote (*adure-band'havam*); that is, any other person, 'whose father and the rest of his relations abide in a near country, 'and whose family and character are consequently known.' The 'authors of the *Calpataru* and *Retnacara* read, 'like the scholiast of 'VISHNU, *adure band'havam asannicrishtam eva*, and thus interpret 'the passage 'should take one whose kinsmen,' namely, his maternal 'uncle and the rest, are near, [and whose name and tribe, with other 'particulars, can therefore be ascertained; or, for want of such 'kindred, ‡] even one whose good or bad qualities are not known, '[or one whose kinsmen are not at hand; for his name and family 'may be ascertained by other sufficient proof.' || ]

"Announced his intention to the king." *Raja* or king, usually signifying the sovereign, is here restricted according to the remark of NANDA PANDITA, to the chief of the town or village.

"In the middle of his dwelling." ] The sequel of VASISHTHA'S text is as follows:—"But if doubt arise, let him set apart [without initiation and with a bare maintenance] like a *Sudra*, one whose kindred are remote. For it is declared [in the *Veda*] Many are saved by one." ¶

15. The same ceremonial.] Excepting the sacrifice or burnt offering. However, even that is to be performed at the adoption of a son self-given. BALAM-BHATTA.

\* *Subod'hini*. † BALAM-BHATTA.

¶ *Vivada-Retnacara*.

‡ *Vivada-Retnacara*.

¶ VASISHTHA, 15. 6.—7.

supposing distress and equality of tribe. As for the text of MENU, ("He is called a son bought, whom a man, for the sake of having issue, purchases from his father and mother: whether the child be equal or unequal to him"\*) it must be interpreted 'whether like or unlike in qualities;' not in class; for the author concludes by saying "This law is propounded by me, in regard to sons equal by class."†

17. The son made (*Crīṭima*) is one adopted by the person himself, who is desirous of male issue: being enticed by the show of money and land, and being an orphan without father or mother: for, if they be living, he is subject to their control.

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16. *As for the text of Menu, &c.*] SUIYANI, on the other hand expounds YAJNYAWALKYA by MENU, and admits the inequality of tribe. 'A child, sold by his father and mother, and received for adoption, is a son bought.. He may be of dissimilar tribe: for the text [of MENU] expresses equal or unequal.'‡ CHANDRISWARA quotes the following discordant interpretations: "Equal;" 'belonging to the same tribe; or, if that be not practicable, one unequal, or not appertaining to the same tribe. So the *Parijata* || But the author of the *Pracasa* observe, 'Though the text express "unequal," yet a child of a superior tribe must not be taken as a son, by a man of inferior tribe; nor one of inferior class, by a man of a higher tribe. And the words "equal or unequal," as interpreted by MEDHATITHI, are relative to similarity in respect of qualities.' ¶

17. *The son made.*] One bereft of father and mother and belonging to the same tribe with the adopter and by him adopted, being enticed to acquiesce by the show of wealth, is a son made by adoption. VISWESWARA in the *Mudana-Parijata*.

The form, to be observed, is this. At an auspicious time, the adopter of a son, having bathed, addressing the person to be adopted, who has also bathed, and to whom he has given some

\* MENU, 9, 174. † YAJNYAWALKYA, 2. 134, Vide § 37.

‡ *Dipacalica* on YAJNYAWALKYA.

¶ Not the *Madana-parijata*, which gives the contrary interpretation.

¶ *Viva'a Retnara'a*.

18. The son self-given is one, who, being bereft of father and mother, or abandoned by them (without cause,\*) presents himself, saying "Let me become thy son."

19. The son, received with a bride, is a child, who, being in the womb, is accepted when a pregnant bride is espoused. He becomes son of the bridegroom.

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acceptable chattel, says "Be my son." He replies "I am become thy son." The giving of some chattel to him arises merely from custom. It is not necessary to the adoption. The consent of both parties is the only requisite; and a set form of speech is not essential. RUDRAD'HARA in the *Sudd'hi-viveka*.

18. *The son self-given.*] He, who, unsolicited, gives himself saying "let me become thy son," is called a son self-given (*swayan-datta*). APABARCA.

Here also it is requisite, that he belong to the same tribe with his adoptive father. VISWESWARA in the *Madana-Parijata*.

"He who has lost his parents, or been abandoned by them without cause, and offers himself to a man as his son, is called a son self-given." MENU.†

Being abandoned by his father and mother without any sufficient cause, such as degradation from class or the like; but merely from inability to maintain him during a death, or for a similar reason, *Viramitrodaya*.

19. *The son received with a bride.*] If a woman be married while pregnant, the child born of that pregnancy is a son received with a bride (*sahnd'ha*;) provided the child were begotten by a man of equal class. VISWESWARA in the *Madana-Parijata*.

He is distinguished from the son of an unmarried damsel, because conception preceded the betrothing of the mother; and from the son of concealed origin, because the natural father is known. Then what difference is there? for the son of the unmarried damsel was conceived before troth plighted.

True: yet there is a great difference, since one is born before marriage, and the other after marriage. This son received with a bride is son of him who takes the hand of the pregnant woman in marriage; for the maternal grandfather's right is divested by his,

\* BALAM-BHATTA.

† MENU, 9. 178.

20. A son deserted (*apaviḍ'd'ha*) is one, who, having been discarded by his father and mother, is taken for adoption. He is son of the taker. Here, as in every other instance, he must be of the same tribe with the adoptive father.

21. Having premised sons chief and secondary, the author explains the order of their succession to the heritage: "Among these, the next in order is heir, and presents funeral oblations on failure of the preceding." \*

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giving away the child with the mother. NANDA PANDITA in the *Vaijayanti* on VISHNU.

Since the bridegroom is specified as the adoptive father, the child does not belong to his natural father. Although the religious ceremony of marriage do not take place in the case of a pregnant woman, since a text of law restricts the prayers of the marriage ceremony to the nuptials of virgins, and forbids their use in the instance of women who are not virgins, as a practice which has become obsolete among mankind; and it would be inconsistent with a passage of the *Veda* [used at the nuptial ceremony as a prayer] expressing "the virgin worships the generous sun in the form of fire;" nevertheless the term "marry" [in the text of MENU †] intends a religious ceremony different from that, but consisting of burnt offerings, and so forth, according to the remark of the *Retnacara* and the rest. VACHESPATI MISRA in the *Sradd'ha chintamani*.

20. *Discarded.*] Abandoned: not for any fault, but through inability to maintain him, or because he was born under the influence of the stars of the scorpion's tail, ‡ or for any similar reason. BALAM-BHATTA.

Since that, of which there is no owner, is appropriated by seizure or occupation, the child becomes son of him, by whom he is taken. NANDA PANDITA in the *Vaijayanti* VISHNU. 15. 24.

\* YAJNYAWALKYA, 2. 133.

† MENU, 9. 173.

‡ The birth of a son, while the moon is near the stars of *Mula* (the scorpion's tail), is dangerous to the father's life, according to *Indian* astrology; and, on this account, a son born under that influence is exposed or abandoned, if natural affection and humanity do not overcome superstition and credulity.

22. Of these twelve <sup>sons</sup> ~~sons~~ abovementioned, on failure of the first respectively, the next in order, as enumerated must be considered to be the giver of the funeral oblation or performer of obsequies, and taker of a share or successor to the effects.

23. If there be a legitimate son and an appointed daughter, MENU propounds an exception to the seeming right of the legitimate son to take the whole estate, "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal: since there is no right of primogeniture for the woman." \*

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22. *Of these twelve sons.*] The various modes of adoption, added to the legitimate son by birth, raise the number of descriptions of sons to twelve, according to most authorities. That number is expressly affirmed by MENU, † NAREDA, ‡ VASISHT'HA, || VISHNU, ¶ &c. A passage is however quoted from DEVALA, asserting the number of fifteen ("The descriptions of sons are ten and five,") and VRIHASPATI is cited as alleging the authority of MENU for thirteen; "Of the thirteen sons, who have been enumerated by MENU in their order, the legitimate son and appointed daughter are the cause of lineage. As oil is declared to be a substitute for liquid butter, so are eleven sons by adoption substituted for the legitimate son, and appointed daughter." NANDA PANDITA, in his commentary on VISHNU, observes, that 'the number of thirteen specified by VRIHASPATI, and that of fifteen by DEVALA, intend subdivisions of the species, not distinct kinds: consequently there is no contradiction: for those subdivisions are also included in the enumeration of twelve.' It appears, however, from a comparison of texts specifying the various descriptions of sons, that the exact number (as indeed is acknowledged by various descriptions, by numerous commentators and compilers) is thirteen: including the son by a *Sudra* woman. Vide § 30.

23. *If there be a son and an appointed daughter.*] So this passage is interpreted by the commentators VIEWESWARA and BALAMBHATT. The original is, however, ambiguous and might be

\* MENU, 9. 134. † MENU, 9. 158. ‡ NAREDA, 13. 44.  
|| VASISHT'HA 17. 11. ¶ VISHNU, 15 1.

24. So the allotment of a quarter share to other inferior sons, when a superior one exists, has been ordained by VASISHT'HA : " When a son has been adopted, if a legitimate son be afterwards born ; the given son shares a fourth part. " \* Here the mention of a son given is intended for an indication of others also, as the son bought, son made by adoption, and [son self-given † and] the rest : for they are equally adopted as sons.

25. Accordingly CATYAYANA says, " If a legitimate son be born, the rest are pronounced sharers of a fourth part, provided they belong to the same tribe, but if they be of a different class, they are entitled to food and raiment only."

26. " Those who belong to the same tribe," as the son of the wife, the son given and the rest [namely the sons bought, made, self-given, and discarded, †] share a fourth part, if there be a true legitimate son : but those, who belong to a different class, as the damsel's son, the son of concealed origin, the son of a pregnant bride, and the son by a twice-married woman, do not take a fourth part, if there be a legitimate son : but they are entitled to food and raiment only.

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explained ' if there be a legitimate son and a son of an appointed daughter ' BALAM-BHATTA remarks that this can only happen where a legitimate son is born after the appointment of a daughter.

24. *So the allotment of a quarter share.*] As the appointed daughter participates where there is a legitimate son ; so do other sons likewise partake. *Subod'hini*.

*The mention of a son given.*] This is according to the reading of the text as here cited and in the *Vīramitrodaya* and CAMALACABA'S *Vivād.-Tundava* But, in the *Cūlpataṛu*, *Retnacara*, *Chintamani*, &c., that restrictive term is wanting : *Sa chaturt'ha-bhaga-bhagi syat*, instead of *Chaturt'ha-bhaga-bhagi syad dattarah*.

25. *Sharers of a fourth part.*] This reading is followed in the *Madana Parijata*, *Vīramitrodaya*, &c. But the *Cūlpataṛu*, *Retnacara*, and other compilations read ' a third part. ' Vide JIMUTA-VAHANA. C. 10 § 13.

\* VASISHT'HA, 15. 8.  
 } *Subod'hini* and *Parijata*.

† BALAM-BHATTA.

27. "Exceptionable sons, as the son of an unmarried damsel, a son of concealed origin, one received with a bride, and a son by a twice-married woman, share neither the funeral oblation, nor the estate." This passage of VISHNU\* merely denies the right of those sons to a quarter share, if there be legitimate issue : but, if there be no legitimate son or other preferable claimant, even the child of an unmarried woman and the rest of the adoptive sons may succeed to the whole paternal estate, under the text before cited (§ 21.)

28. "The legitimate son is the sole heir of his father's estate ; but, for the sake of innocence, he should give a maintenance to the rest." † This text of MENU must be considered as applicable to a case, where the adopted sons (namely the son given and the rest) are disobedient to the legitimate son and devoid of good qualities.

29. Here a special rule [different from CATYAYANA'S ‡] is propounded by the same author (MENU) respecting the son of the wife : Let the legitimate son, when dividing the paternal heritage give a sixth part, or a fifth, of the patrimony to the son of the wife." || The cases must be thus discriminated : if disobedience and want of good qualities be united, then a sixth part should be allotted. But, if one only of those defects exist, a fifth part.

30. MENU, having premised two sets of six sons, declares the first six to be heirs and kinsmen ; and the last to be not heirs but kinsmen : "The true legitimate issue, the son of a wife, a son given, and one made by

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28. *Applicable to a case where adopted sons (namely the son given, &c.) are disobedient.*] It also relates to the damsel's son and the rest : for they are declared entitled to food and raiment only, if there be legitimate issue ; and that must be supposed to be founded on the same authority with this text : but MENU has himself propounded a fifth or a sixth part for the son of the wife if there be legitimate issue. ¶ *Viramitrodaya.*

\* It is not found in the institutes of VISHNU ; but is cited from that author in the *Madana-parijata* and *Viramitrodaya*, as in this place.

† MENU, 9. 163.

|| MENU, 9. 151.

‡ BALAM-BHATTA.

¶ VIDE § 28.



adoption, a son of concealed origin, and one rejected [by his parents,] are the six heirs and kinsmen. The son of an unmarried woman, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a *Sudra* woman, are six not heirs but kinsmen." \*

31. That must be expounded as signifying, that the first six may take the heritage of their father's collateral kinsmen (*sapindas* and *samanodacas*) if there be no nearer heir; but not so the last six. However, consanguinity and the performance of the duty of offering libations of water and so forth, on account of relationship near or remote, belong to both alike.

32. It must be so expounded; for the mention of a given son in the following passage is intended for any adopted or succedaneous son. "A given son must never claim the family and estate of his natural father.

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31. *The first six may take the heritage of collateral kinsmen: . . . not so the last six.*] The sense of the two passages is, that, if there be no nearer collateral kinsman, the first six inherit the property; but not the six last. *Subod'hini.*

*However, consanguinity &c.*] MED'HATIT'HI interprets the text of MENU signifying that 'the last six are neither heirs nor kinsmen.' But that interpretation is censured by CALLUCA-BHATTA; and is supposed by the commentator on the *Mitacshara* to be here purposely confuted.

32. *The mention of a given son is intended for any adopted son.*] The meaning, as here expressed, is this: the mention of a son given is in this place intended to denote any succedaneous son. Consequently since it appears from the text that adopted sons have a right of inheritance; but, according to the opponent's opinion, it appears from another passage, that they have not a right of succession; it might be concluded from such a contradiction, that the precepts have no authority: therefore lest the text become futile, the interpretation, proposed by us, is to be preferred. *Subod'hini.*

The funeral oblation follows the family and estate: but of him, who has given away his son, the obsequies fail." \*

33. All, without exception, have a right of inheriting their father's estate, for want of a preferable son: since a subsequent passage ("Not brothers, nor parents, but sons, are heirs to the estate of the father," †) purposely affirms the succession of all subsidiary sons other than the true legitimate issue; and the right of the legitimate son is propounded by a separate text ("The legitimate son is the sole heir of his father's estate;" ‡) and the word "heir" (*dayada*) is frequently used to signify any successor other than a son.

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*Of him, who has given away his son, the obsequies fail.]* This must be understood of the case where the giver has other male issue. *Subod'hini*.

But, if he have not, then even that son is competent to inherit his estate and to perform his obsequies; like the son of two fathers (Sect. 10 § 1): for a passage of SATATAPA directs "Let the given son present oblations to his adoptive parent and to his natural father, on the anniversary of decease, and at *Gaya*, and on other occasions; not, however, if there be other male issue." This indeed can only occur where the natural father is bereft of issue after giving away his son: since, at the time of the gift, it is forbidden to part with an only son (§ 11.) In this manner is to be understood the circumstance of a given son, as son of two fathers, conferring benefits on both. BALAM-RHATTA.

If either the natural parent or the adoptive father have no other male issue, the *Dvayamushyayana* or son of two fathers shall present the funeral oblation to him and shall take his estate: but not so, if there be male issue. If both have legitimate sons, he offers an oblation to neither, but takes the quarter of a share allotted to a legitimate son of his adoptive father. *Vyavahara-mayuc'ha*.

33. *The word "heir" is frequently used.]* An instance is cited in the text. It is part of a passage, of which the sequel has not been found. The words are "let him compel the heirs to pay."

\* MENU, 9. 142.

† MENU, 9. 185.

‡ Vide § 28.

34. The variation which occurs in the institutes of VASISHT'HA and the rest, respecting some one in both sets, must be understood as founded on the difference of good and bad qualities.

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34. *The variation, which occurs in Vasisht'ha, &c.*] MENU, declaring the appointed daughter equal to the legitimate son, includes her under legitimate issue,\* and proceeds to define the remaining ten succedaneous sons.† But VASISHT'HA states the appointed daughter as third in rank;‡ which is a disagreement in the order of enumeration. The same must be understood of other institutes of law|| which are here omitted for fear of prolixity. How then is the succession of the next in order on failure of the preceding reconcileable? The author proposes this difficulty with its solution. His notion of the mode of reconciling it is this: MENU, declaring that the first set of six sons by birth or adoption is competent to inherit from collateral kinsmen on failure of nearer heirs, but not so the second set, afterwards proceeds to deliver incidentally definitions of those various sons. It appears therefore to be a loose enumeration, and not one arranged with precision. Accordingly MENU, in saying "Let the inferior in order take the heritage," ¶ does not limit this very order, but intends one different in some respects: and the difference is relative to good and bad qualities. The same method must be used with the variations in other codes. Moreover, what is ordained by YAJNYAWALCYA is consistent with propriety. For the true legitimate son and the son of an appointed daughter are both legitimate issue and consequently equal. The son of the wife, a son of hidden origin, the son of an unmarried damsel, and a son by a twice-married woman, being produced from the seed of the adoptive father or from a soil appertaining to him, have the preference before the son given and the rest. The son received with a bride, being produced from soil which the adoptive father accepts for his own, is placed in the second set by the authority of the text [or because the mother did not appertain to the adoptive father at the

\* MENU, 9. 165. † MENU, 9. 166—178. ‡ VASISHT'HA, 17. 14.

|| AS VISHNU, 15. 2—37. NAREDA, 13. 44—45, DEVALA, &c.

¶ MENU, 9. 124.

35. But the assignment of the tenth place to the son of an appointed daughter, in GAUTAMA'S text, is relative to one differing in tribe.

36. The following passage of MENU, "If, among several brothers of the whole blood, one have a son born, MENU pronounces them all fathers of male issue by means of that son;"\* is intended to forbid the adoption of others, if a brother's son can possibly be adopted. It is not intended to declare him son of his uncle: for that is inconsistent with the subsequent text; "brothers likewise and their sons, gentiles, cognates, &c."†

37. The author next adds a restrictive clause by way of conclusion to what had been stated: "This law is propounded by me in regard to sons equal by class."‡

38. This maxim is applicable to sons alike by class, not to such as differ in rank.

39. Here the damsel's son, the son of hidden origin, the son received with a bride, and a son by a twice-married woman, are deemed of like class, through their

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time when the child was begotten. ||] The whole is therefore unexceptionable. *Subod'hini*.

36. *That is inconsistent with the subsequent text.*] It is incompatible with a passage of YAJNYAWALCYA declaratory of the nephew's right of succession after brothers. For, if he be deemed a son, because all the brethren are pronounced fathers of male issue by means of the son of a brother, he ought to inherit before all other heirs, such as the father and the rest, [who are in that passage preferred to him.] *Subod'hini*.

The principle of giving a preference to the nephew, as the nearest kinsman, in the selection of a person to be adopted, is carried much further by NANDA PANDITA in the *Dattaca-mimansa*: and, according to the doctrine there laid down, the choice should fall on the next nearest relation, if there be no brother's son; and on a distant relation, in default of near kindred: but on a stranger, only upon failure of all kin. See § 13.

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\* MENU, 9. 182.

† YAJNYAWALCYA, 2. 136. Vide infra C. 2. Sect 1. § 1.

‡ YAJNYAWALCYA, 2. 134,

|| BALAM-BHATTA.

natural father, but not in their own characters : for they are not within the definition of tribe and class.

40. Since issue, procreated in the direct order of the tribes, as the *Murd'havasieta* and the rest, are comprehended under legitimate issue, it must be understood, that, on failure of these also, the right of inheritance devolves on the son of the wife and the rest.

41. But the son by a *Sudra* wife, though legitimate, does not take the whole estate, even on failure of other issue. Thus MENU says, "But, whether the man have sons, or have no sons, [by his wives of other classes] no more than a tenth part must be given to the son of the *Sudra*." \*

42. "Whether he have sons," whether he have male issue of a regenerate tribe ; "or have no sons," or have no issue of such a tribe ; in either case, upon his demise, the son of the wife or other [adoptive son,] or any other kinsman [and heir,] shall give to the *Sudra's* son, no more than a tenth part of the father's estate.

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39. *They are not within the definition of tribe.*] For YAJNYA-WALCYA, having described the origin and distinctions of the tribes and classes, [viz., the *Murd'havasieta*, *Ambash'tha*, *Nishada*, *Mahishya*, *Ugra* and *Carana* :] adds "This rule concerns the children of women lawfully married." † *Viramitrodyā*.

Since these (viz., the damsel's son and the rest) are bastards, born either in fornication or adultery, their exclusion from class, tribe, &c., has been ordained in the first book on religious observances. *Subod'hini*.

41. *No more than a tenth part.*] Is not this wrong ? for it has been declared, that the *Sudra's* son shall take a share in a distribution among sons of various tribes (Sect. 8. § 1) ; but it is here directed, that he shall have a tenth part. No : for the four shares of the *Brahmani's* son, with three for the *Cshatriya's* child, make seven ; and, with two for the *Vaisya's* offspring, make nine ; adding that to one for the *Sudra's* son, the sum is ten. Thus there is no contradiction : for in that instance also, his participation for a tenth part is ordained : and the whole is unexceptionable. *Subod'hini*.

\* MENU, 9, 154.

† YAJNYAWALCYA, 1. 93.

43. Hence it appears, that the son of a *Cshatriya* or *Vaisya* wife takes the whole of the property on failure of issue by women of equal class.

## SECTION XII.

*Rights of a son by a female slave, in the case of a Sudra's estate.*

1. The author next delivers a special rule concerning the partition of a *Sudra's* goods. "Even a son begotten by a *Sudra* on a female slave may take a share by the father's choice. But, if the father be dead, the brethren should make him partaker of the moiety of a share : and one, who has no brothers, may inherit the whole property, in default of daughter's sons.\*"

2. The son begotten by a *Sudra* on a female slave, obtains a share by the father's choice, or at his pleasure. But after [the demise of †] the father, if there be sons of a wedded wife, let these brothers allow the son of the female slave to participate for half a share ; that is, let them give him half [as much as is the amount of one brother's ‡] allotment. However, should there be no sons of a wedded wife, the son of the female slave takes the whole estate, provided there be no daughters of a wife, nor sons of daughters. But, if there be such, the son of the female slave participates for half a share only.

3. From the mention of a *Sudra* in this place, [it follows, that] the son begotten by a man of a regenerate tribe on a female slave, does not obtain a share even by the father's choice, nor the whole estate after his demise. But, if he be docile, he receives a simple maintenance.

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43. *Hence it appears.*] It so appears from the text of MENU above cited (§ 41). BALAM-BHATTA.

1. "In default of daughter's sons." Some interpret this 'on failure of daughters and in default of their sons.' BALAM-BHATTA.

\* YAJNYAWALKYA. 2. 134—135.

† BALAM-BHATTA.

‡ *Subod'hini* and BALAM-BHATTA.

## CHAPTER II.

### SECTION I.

*Right of the widow to inherit the estate of one, who leaves no male issue.*

1. THAT sons, principal and secondary, take the heritage, has been shown. The order of succession among all [tribes and classes \*] on failure of them, is next declared.

2. "The wife, and the daughters also, both parents, "brothers likewise, and their sons, gentiles, cognates, a "pupil, and a fellow student : on failure of the first among "these, the next in order is indeed heir to the estate of "one, who departed for heaven leaving no male issue. "This rule extends to all [persons and †] classes."‡

3. He, who has no son of any among the twelve descriptions above stated (C. I. "1") is one having 'no male issue.' Of a man, thus leaving no male progeny, and going to heaven, or departing for another world, the heir or successor, is that person, among such as have been here enumerated, (*viz.*, the wife and the rest,) who is next in order, on failure of the first mentioned respectively. Such is the construction of the sentence.

4. This rule, or order of succession, in the taking of an inheritance, must be understood as extending to all tribes, whether the *Murd'havasicta* and others in the

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2. "*Brothers likewise.*" ] This is understood by BALAM-BHATTA as signifying both brothers and sisters.

"*And their sons.*" ] BALAM-BHATTA understood the daughters of brothers, as well as their sons.

3. *Such is the construction of the sentence.* ] The commentator BALAM-BHATTA disapproves the reading which is here followed. The difference is, however, immaterial.

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\* *Subod'hini.* † *Subod'hini.* ‡ YAJNYWALOKA, 2, 136—137.

direct series of the classes, or *Suta* and the rest in the inverse order ; and as comprehending the several classes, the sacerdotal and the rest.

5. In the first place, the wife shares the estate. "Wife" (*patni*) signifies a woman espoused in lawful wedlock ; conformably with the etymology of the term as implying a connection with religious rites.

6. *Vridāha* MENU also declares the widow's right to the whole estate. "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share."\* *Vṛihad-VISHNU* likewise ordains it : "The wealth of him, who leaves no male issue, goes to his wife ; on failure of her, it devolves on daughters ; if there be none, it belongs to the father ; if he be dead, it appertains to the mother."† So does *CATYAYANA* : "Let the widow succeed to her husband's wealth, provided she be chaste ; and, in default of her, the daughter inherits if unmarried."‡ And again, in another place : "The widow, being a woman of honest family, or the daughters, or on failure of them the father, or the mother, or the brother, or his sons, are pronounced to be the heirs of one who leaves no male issue."|| Also *VRIHASPATI* : "Let the

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5. *Conformably with the etymology.*] A rule of grammar is cited in the text : viz. *PANINI*, 4. 1. 35.

The author of the *Subod'hini* remarks, that the meaning of the grammatical rule cited from *PANINI* is this : *Patni* 'wife' anomalously derived from *Pati* 'husband,' is employed when connection with religious rites is indicated : for they are accomplished by her means, and the consequence accrues to him. The purport is, that a woman, lawfully wedded, and no other, accomplishes religious ceremonies : and therefore one espoused in lawful marriage is exclusively called a wife (*patni*) Although younger wives are not competent to assist at sacrifices or other religious rites, if an eldest wife exist, who is not disqualified ; still since the rest become

\* See a note on this passage in *JIMUṢA-VAHANA*, Ch. 11. Sect. 1. § 7. † Vishnu, 17, 4—7. ‡ Vide infra. Sect. 2. § 2.

|| In the *Vṛamitrodāya*, this is cited as a text of different author ; but the commentator on the *Mitacshara* treats it as a further passage from the author before cited.



wife of a deceased man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brethren, be present” .

7 Passages, adverse to the widow's claim, likewise occur. Thus NAREDA has stated the succession of brothers, though a wife be living, and has directed the assignment of a maintenance only to widows “Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But, if they behave otherwise, the brethren may resume that allowance” \* MENU propounds the succession of the father, or of the brother, to the estate of one who has no male offspring. “Of him, who leaves no son, the father shall take the inheritance, or the brother” † He likewise states the mother's right to the succession, as well as the paternal grandmother's. “Of a son dying childless, the mother shall take the estate and, the mother also being dead, the father's mother shall take the heritage” ‡ SANCHA also declares the successive rights of brothers, and of both parents, and lastly of the eldest wife “The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers If there be none, his father and mother take it, or his eldest wife” CATYAYANA too says “If a man die separate from his coheirs, let his father take the property on failure of male issue, or successively the brother, or the mother, or the father's mother”

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competent in their turns, on failure of her, or even during her life, if she be afflicted with a lasting malady or be degraded for misconduct, they possess a capacity for the performance of religious ceremonies . and here such capacity only is intended Or else marriage may be exclusively meant by religious rites for offerings are made to deities at that ceremony , and such also is a sacrifice or solemn rite. Thus likewise, a woman lawfully espoused, and no other, is a wife (*patni*),

\* NAREDA, 13 25—26 † MENU, 9 185 Vide Sect 4 § 1.

‡ MENU, 9, 217, Vide sect. 4. § 2. & section 5. § 2.

8. The application of these and other contradictory passages is thus explained by D'HARESWARA: 'The rule deduced from the texts [of YAJNYAWALCYA, &c. \*], that the wife shall take the estate, regards the widow of a separated brother: and that, provided she be solicitous of authority for raising up issue to her husband. Whence is it inferred, that a widow succeeds to the estate, provided she seek permission for raising up issue, but not independently of this consideration? From the text above cited, "Of him, who leaves no son, the father shall take the inheritance;" † and other similar passages [as NAREDA'S, &c. ‡] For here a rule of adjustment and a reason for it must be sought; but there is none other. Besides it is confirmed by a passage of GAUTAMA: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man, if she seek to raise up offspring to him." ||

9. 'The meaning of the text is this: persons, connected by a common oblation, by race, or by descent from a patriarch, share the effects of one who leaves no issue: or his widow takes the estate, provided she seek progeny.'

10. MENU likewise shows by the following passage, that, when a brother dies possessed of separate property, the wife's claim to the effects is in right of progeny,

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8. *And other contradictory passages.*] Alluding to the texts of GAUTAMA and DEVALA subsequently quoted. BALAM-BHATTA.

*The rule deduced from the texts.*] From those of YAJNYAWALCYA (§ 2.), *Vrida'ha*-MENU, VISHNU, CATYAYANA and VRIHASPATI (§ 6.) *Subod'hini*, &c.

"*If she seek .... offspring.*"] The particle (*va*) is understood by the author, by whom the passage is here cited, in the conditional sense, as appears from the interpretation of the text in the next paragraph (§ 9.); according to the remark of the commentators on the *Mitacshara*. But the scholiast of GAUTAMA takes it in its usual disjunctive sense: and the text is differently interpreted by the author of the *Mitacshara* himself (§ 18.)

\* *Subod'hini*.

† MENU, 9, 185. Vide supra. § 7.

‡ BALAM-BHATTA. || GAUTAMA, 28. 19—20. Vide infra. § 18.

and not in any other manner. "He, who keeps the estate of his brother and maintains the widow, must, if he raise up issue to his brother, deliver the estate to the son." \* So, in the case of undivided property likewise, the same author says, "Should a younger brother have begotten a son on the wife of his elder brother, the division must then be made equally: thus is the law settled." †

11. 'VASISHT'HA also, forbidding an appointment to raise up issue to the husband, if sought from a covetous motive ("An appointment shall not be through covetousness;" ‡) thereby intimates, that the widow's succession to the estate is in right of such an appointment, and not otherwise.'

12. 'But, if authority for that purpose have not been received, the widow is entitled to a maintenance only; by the text of NAREDA: "Let them allow a maintenance to his women for life." ||

13. 'The same (it is pretended) will be subsequently declared by the contemplative saint: "And their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled; and so, indeed, should those, who are perverse." ¶

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10. "*Must deliver the estate to the son.*" It is thus shown, that a separated brother is meant; else, if there had been no partition, he could have separate property. In the text subsequently cited, it appears from the direction for making the division equally that the case of an unseparated coheir is intended. Since there could be no partition, if he were already separated. *Subod'hini.*

11. *The widow's succession is in right of such an appointment.* A widow, who has accepted authority for raising up issue to her husband, has the right of succession to his estate, but no other widow has so. *Viramitrodaya.*

13. *The same (it is pretended) will be declared.* Here the particle *cila* indicates disapprobation; as in the example 'Ah! will thou [presume to] fight.' For this passage of YAJÑYAWALKYA will be expounded in a different sense. So the expression 'by some

\* MENU, 9. 146. † MENU. 9. 120. ‡ VASISHT'HA, 17. 48.  
|| NAREDA, 13. 26, Vide supra. § 7. ¶ YAJÑYAWALKYA, 2. 143.

14. ' Moreover, since the wealth of a regenerate man is designed for religious uses, the succession of women to such property is unfit ; because they are not competent to the performance of religious rites. Accordingly, it has been declared by some author, " Wealth was produced for the sake of solemn sacrifices : and they, who are incompetent to the celebration of those rites, do not participate in the property, but are all entitled to food and raiment." " Riches were ordained for sacrifices. Therefore they should be allotted to persons who are concerned with religious duties ; and not be assigned to women, to fools, and to people neglectful of holy obligations."

15. That is wrong : for authority to raise up issue to the husband is neither specified in the text, (" The wife and the daughters also, &c." \*) nor is it suggested by the premises. Besides, it may be here asked ; is the appointment to raise up issue a reason for the widow's succession to the property ? or is the issue, borne by her, the cause of her succession ? If the appointment alone be the reason, it follows, that she has a right to the estate, without having borne a son ; and the right of the son subsequently produced [by means of the appointment †] does not ensue. But, if the offspring be the sole cause [of her claim, ‡] the wife should not be recited as a successor : since, in that case, the son alone has a right to the goods.

16. But, it is said, women have a title to property, either through the husband, or through the son, and not

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author' (§ 14 ) is intended as an indication of disrespect. Hence the insertion of the passage so cited, in this argument, does not imply an acknowledgment of it as original and genuine. *Subod'hini*.

14. *It has been declared by some author,*] The passage here cited is not considered as authentic ; and no authority is shown for that and the following text. BALAM-BHATTA.

15. *And the right of the son subsequently produced does not ensue.*] Which is inconsistent with the enunciation of his right of succession, as one of the twelve descriptions of sons, preferably to the widow and other heirs. *Subod'hini* and BALAM-BHATTA.

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\* § 2.

† BALAM-BHATTA.

‡ BALAM-BHATTA.

otherwise. That is wrong : for it is inconsistent with the following text and other similar passages. "What was given before the nuptial fire, what was presented in the bridal procession, what has been given in token of affection, what has been received by the woman from her brother, her mother, or her father, are denominated the sixfold property of a woman." \*

17. Besides, the widow and the daughters are announced as successors (§ 2), on failure of sons of all descriptions. Now by here affirming the right of a widow who has been appointed to raise up issue, the right of her son to succeed to the estate is virtually affirmed. But that had been already declared ; and therefore the wife ought not to be mentioned under the head [of succession to the estate †] of one who leaves no male issue.

18. But, it is alleged, the right of a widow, who is authorized to raise up issue to her husband, is deduced from the text of GAUTAMA : "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage ; or the widow of a childless man : and she may either [remain chaste, or may] seek offspring. ‡" This too is erroneous : for the sense, which is there expressed, is not 'If she seek to obtain offspring, she may take the goods of one who left no issue ;' but 'persons allied by the funeral oblation, by family name, and by descent from the same patriarch, share the effects of one who leaves no issue ; or his widow takes his estate : and she may either seek to obtain progeny, or may

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16. *That is wrong : for it is inconsistent with the following text.* Admitting the restriction, that women obtain property through their husbands or sons only, still that restriction does not hold good universally, since women's right of property is declared in other instances. *Subod'hini.*

17. *The wife ought not to be mentioned.* She ought not to be here mentioned, lest it should be thought a vain repetition. *Subod'hini.*

18. *She may either seek to obtain progeny.* The author proposes two modes of conduct for a woman whose husband is deceased. One

\* MENU, 9, 194.

† BALAM-BHATTĀ.

‡ Vide § 8. The text is here translated according to the commentator's interpretation.

remain chaste.' This is an instruction to her, in regard to her duty. For the particle (*va*) 'or,' denoting an alternative, does not convey the sense of 'if.' Besides it is fit, that a chaste woman should succeed to the estate, rather than one appointed to raise up issue, reprobated as this practice is in the law as well as in popular opinion. The succession of a chaste widow is expressly declared: "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire share."\* And an authority to raise up issue is expressly condemned by MENU: "By regenerate men no widow must be authorized to conceive by any other; for they, who authorize her to conceive by another, violate the primeval law."†

19. But the text of VASISHT'HA "An appointment shall not be through covetousness;"‡ must be interpreted: 'if the husband die either unseparated from his coparceners or reunited with them, she has not a right to the succession; and therefore an appointment to raise

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is, that she should seek offspring, or endeavour to obtain male issue under an authority for that purpose. The term *va* (either, or,) in this place does not signify 'if;' but indicates an alternative and that implies an opposite case; and the opposite case is the second mode of conduct, which, though not expressly stated in the text, must, by force of the particle *va*, in its usual disjunctive acceptation, be opposite to the desire of obtaining progeny by means of an appointment to raise up issue; and this is consequently determined to be the duty of chastity. The meaning therefore is this: two modes of conduct are here prescribed: either she must seek male issue by means of an appointment for that purpose, or she must remain chaste. *Subod'hini*.

19. *Therefore an appointment.....must not be accepted.*] Considering, that she has not herself a right to the estate, she ought not to seek an authority for raising up issue, from covetousness, with the view that the wealth may go to her progeny as it cannot belong to herself. *Subod'hini*.

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\* Vide § 6. † MENU, 9. 64. Vide C. 1. Sec. 10. ‡ Vide § 11.

up issue must not be accepted for the sake of securing the succession to her offspring.

20. As for the text of NAREDA, "Let them allow a maintenance to his women for life;" \* Since reunion of parceners had been premised (in a former text, viz, "The shares of reunited brethren are considered to be exclusively theirs;" †) it must be meant to assign only a maintenance to their childless widows. Nor is tautology to be objected to that passage, the intermediate text being relative to reunited parceners ("Among brothers, if any one die without issue, &c." ‡) For women's separate property is exempted from partition by this explanation of what had been before said; and a mere maintenance for the widow, is at the same time ordained.

21. The passage, which has been cited, "Their childless wives, conducting themselves aright, must be supported;" § will be subsequently shown to intend the wife of an impotent man and so forth. ¶

22. As for the argument, that the wealth of a regenerate man is designed for religious uses; and that a woman's succession to such property is unfit, because she is not competent to the performance of religious rites; that is wrong; for, if everything, which is wealth, be

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20. *Nor is tautology to be objected.*] On the ground, that both passages convey the same import For, in explaining what had been before said, the two several passages convey two distinct meanings. namely, that the woman's separate property is not to be divided; and that a maintenance only is to be granted to them. What had been before said, is not all which is afterwards declared; that it should be charged with tautology. The text "Among brothers, if any one die without issue," is an explanation of the preceding one ("The shares of the reunited brethren are considered to be exclusively theirs.") The close of it, "except the wife's separate property," is a declaration of her property being indivisible; and the subsequent passage ("Let them allow a maintenance to his women for life") contains a separate injunction. BALAM-BHATTA.

\* NAREDA, 13. 26. Vide § 12.

† NAREDA, 13. 24.

‡ NAREDA, 13. 25. See JIMUTA-VAHANA, Ch 11. Sec. 1 § 48.

§ Vide supra. § 13.

¶ Vide Sect. 10 § 15.

intended for sacrificial purposes, then charitable donations burnt offerings, and similar matters, must remain unaccomplished. Or, if it be alleged, that the applicableness of wealth to those uses is uncontradicted, since sacrifice here signifies religious duty in general; and charitable donations, burnt offerings and the rest are acts of religious duty; still other purposes of opulence and gratification, which are to be effected by means of wealth, must remain unaccomplished; and, if that be the case, there is an inconsistency in the following passages of YAJNYAWALCYA, GAUTAMA and MENU. "Neglect not religious duty, wealth or pleasure in their proper season." \* "To the utmost of his power, a man should not let morning, noon or evening be fruitless, in respect of virtue, wealth and pleasure." † "The organs cannot so effectually be restrained by avoiding their gratification, as by constant knowledge [of the ills incident to sensual pleasure." ‡]

23. Besides, if wealth be designed for sacrificial uses, the argument would be reversed, by which it is shown, that the careful preservation of gold [inculcated by a passage of the *Veda* ||] "Let gold be preserved," is intended not for religious ends, but for human purposes.

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22. *Sacrifice here signifies religious duty in general.*] The relinquishment of a thing, with the view to its appertaining to a deity, is a sacrifice (*yaga*) or consecration of the thing. The same design, terminated by casting the thing into flames, is a burnt offering (*homa*) or holocaust. The conferring of property on another by annulling a previous right, is a gift (*dana*) or donation. Such is the difference between sacrifice, burnt offering and donation. *Subodhini.*

"*In their proper season.*" ] This part of the text was wanting in the quotation of it, as here exhibited: but the passage, as it is read in its proper place, by the *Mitacshara*, *APARANCA* and the *Dipacatica*, contains the words *swace cale* 'in their proper season.'

23. *The argument would be reversed.*] The reasoning here alluded to occurs in the *Mimansa*: and is the 12th topic of the 4th section of the 3rd chapter. The passage of the *Veda*, which is here

\* YAJNYAWALCYA, 1. 115. † Not found in GAUTAMA's institutes.

‡ MENU, 2. 96. partially quoted in this place. || BALAM-BHATTA



24. Moreover, if the word sacrifice import religious duty in general, the succession of women to estates is most proper, since they are competent to the performance of auspicious and conservatory acts [as the making of a pool or a garden, &c \* ]

25. The text of NAREDA, which declares the dependence of women, ("A woman has no right to independence," †) is not incompatible with their acceptance of property ; even admitting their thralldom.

26. How then are the passages before cited ("Wealth was produced for the sake of solemn sacrifices, &c." ‡) to be understood ? The answer is, wealth, which was obtained [in charity ||] for the express purpose of defraying sacrifices, must be appropriated exclusively to that use even by sons and other successors. The text intends that : for the following passage declares it to be an offence [to act otherwise,] without any distinction in respect of sons and successors, "He, who, having received articles for a sacrifice, disposes not of them for that purpose, shall become a kite or a crow." ¶

27. It is said by CATYAYANA "Heirless property goes to the king, deducting however a subsistence for the females as well as the funeral charges : but the goods belonging to a venerable priest, let him bestow on venerable priests." "Heirless property," or wealth

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examined, and the initial words of which are quoted in the text, enjoins the careful preservation of gold, lest it lose its brightness and be tarnished. The question, raised on it, is whether the observance of the precept be essential to the efficacy of sacrifice or serve only a human purpose ; and the result of the reasoning is that the precept affects that person, and not the sacrifice. The reasoning is considered by the author to be incompatible with the notion, that wealth is intended solely for sacrificial uses.

27. "*Let him bestow on venerable priests*" . . . '*let him bestow on a venerable priest.*' ] The commentator, BALAM-BHATTA, considers

\* BALAM-BHATTA † NAREDA, 13. 31. ‡ Vide § 14.

|| BALAM-BHATTA.

¶ This is a passage of MENU according to BALAM-BHATTA ; and a text of the same import, but expressed in other words, occurs in his institutes, 11. 25.

which is without an heir to succeed to it, "goes to the king," or becomes the property of the sovereign; "deducting however a subsistence for the females as well as the funeral charges:" that is, excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funeral repasts and other obsequies in honour of the late owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods belonging to a venerable priest," deducting however a subsistence for the females as well as the charges of obsequies, 'let him bestow on a venerable priest.'

28. This relates to women kept in concubinage: for the term employed is "females" (*yo shid*). The text of NAREDA likewise relates to concubines; since the word there used is "women" (*stri*). "Except the wealth of a *Brahmana* [property goes to the king on failure of heirs.] But a king, who is attentive to the obligations of duty, should give maintenance to the women of such persons. The law of inheritance has been thus declared."\*

29. But since the term "wife" (*patni*) is here employed, (§ 2) the succession of a wedded wife, who is chaste, is not inconsistent with those passages.

30. Therefore the right interpretation is this: when a man, who was separated from his coheirs and not reunited with them, dies leaving no male issue, his widow [if chaste†] takes the estates in the first instance. For partition had been premised; and reunion will be subsequently considered.

31. It must be understood, that the explanation, proposed by SRICARA and others, restricting [the widow's

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as a variation in the reading of the text, the subsequent interpretation of it, 'let him bestow on a venerable priest: ' *śrotriya-yopapadaye*t in place of *śrotriya-bhṛāṣ tad arpayet*. He remarks, however, that the singular number is used generally.

28. *The text... relates to concubines.*] Or to twice-married women and others not considered as wives espoused in lawful wedlock. BALAM-BHATTA.

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\* NAREDA, 13. 51-52.

† BALAM-BHATTA.

succession] to the case of a small property, is refuted by this [following argument.\*] If there be legitimate sons, it is provided, whether partition be made in the owner's lifetime or after his decease, that the wife shall take a share equal to the son's. "If he make the allotments equal, his wives must be rendered partakers of like portions." † And again: "Of heirs dividing after the death of the father, let the mother also take an equal share." ‡ Such being the case, it is a mere error to say, that the wife takes nothing but a subsistence, from the wealth of her husband, who died leaving no male issue.

32. But it is argued, that, under the terms of the texts above cited, ("his wives must be rendered partakers of like portions;" and "let the mother also take an equal share;") a woman takes wealth sufficient only for her maintenance. That is wrong: for the words "share" or "portion," and "equal" or "like," might consequently be deemed unmeaning.

33. Or suppose, that if the wealth be great, she takes precisely enough for her subsistence; but if

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31. *It is a mere error to say, that the wife takes nothing but a subsistence.* If the wife share a portion equal to that of a son, not an allotment sufficient only for her support, both when the husband is living, and after his decease, though sons exist; more especially should it be affirmed, that she obtains the whole wealth of her husband, who leaves no male issue: and thus, since the widow's succession to the whole estate is established by reasoning *a fortiori*, the assertion, that she obtains no more than food and raiment, is erroneous. Besides, since the wife's participation with a son, who is entitled to take a share of the estate, or if there be no other son, the whole of it, has been expressly ordained, it is fit that she should, on failure of male issue, take the wealth of her childless husband being separate from his coheirs. *Subod'hini.*

32. *For the words "share" and "equal" might consequently be deemed unmeaning.* These terms are commonly employed to signify 'portion' and 'parity.' By abandoning their own signification without sufficient cause, they would appear unmeaning. *Subod'hini.*

\* BALAM-BHATTA. † C. 1. Sect. 2. § 8. ‡ C. 1. Sect. 7. § 1.

small, she receives a share equal to that of a son. This again is wrong: for variableness in the precept must be the consequence. Thus, if the estate be considerable, the texts above cited, ("his wives must be rendered partakers of like portions;" and "let the mother also take an equal share;") assisted by another passage ["Let them allow a maintenance to his women for life;" § 12 \*] suggest an allotment adapted for bare support. But, if the estate be inconsiderable, the same passages indicate the assignment of a share equal to a son's.

34 Thus, in the instance of the *Chatumarsye* sacrifices, in the disquisition [of the *Mimansa*] on the passage

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#### ANNOTATIONS.

33. *Variableness in the precept must be the consequence.*] If the passages above cited (§ 31), assisted by another passage (§ 12), ordain the widow's receipt of a sufficiency for her support, at the time of making a partition with the sons, whether her husband, who was wealthy, be then alive or dead; but ordain her taking of a share equal to that of a son, if her husband possess little property; then a single sentence, once uttered, is in one case dependant [on a different passage, for its interpretation,] and not so in another instance. Consequently, since it does not retain an uniform import, there is variableness in the precept *Subod'hini*.

34. *In the instance of the Chaturmasya sacrifices.*] These are four sacrifices performed on successive days, according to some authorities; but in the months of *Ashad'ha*, *Cartica*, and *P'halguna*, according to others. They are severally denominated *Vaisvedeva*, *Varuna-praghasa*, *Sacamed'ha* and *Sunasiriga*. The oblations consist of roasted cakes (*Purodasa*); and, at the second of them, two figures of sheep made of ground rice. The cakes are prepared in the usual manner, consisting of rice, kneaded with hot water, and formed into lumps of the shape of a tortoise. these are roasted on a specified number of potsherds (*capala*) placed in a circular hole, which contains one of the three consecrated fires perpetually maintained by devout *Brahmanas*.

*In the disquisition on the passage dwayoh pran ayanti.] Part of a*

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\* *Subod'hini* and BALAM-BHATTA.

*dwayoh pran ayanti*; \* where it is maintained by the opponent, that the rules for the preparation of the sacrificial fire at the *Soma-yaga* extend to these sacrifices; in consequence of which the injunction not to construct a northern altar (*uttara-vedi*) at the *Vaisveda* and *Suna-siriya* sacrifices, must be understood as a prohibition of such altar; [which should else be constructed at those sacrifices as at a *Soma-yaga* :] but it is answered by an advocate for the right opinion, that it is not a prohibition of that altar as suggested by extending to those sacrifices the rules for preparing the sacrificial fire at the *Soma-yaga*, but an exception to the express rule "prepare an *uttara-vedi* at this sacrifice [*viz*, at the *Chaturmasya* ;]" it is urged in reply by the opponent, that variableness in the precept must follow, since the same precept thus authorizes the occasional construction of the altar, with reference to a prohibition of it, at the first and last of the [four] periods of sacrifice, and commands the construction of it at the two middle periods, independently of any other maxim: but it is finally shown as the right doctrine, for the very purpose of obviating the objection of variableness in the precept, that the prohibition of the altar at the first and last of the periods of sacrifice is a recital of a

#### ANNOTATIONS.

passage of the *Veda*, which is the subject of a disquisition in the *Mimansa* and which gives name to it. This is the ninth (or, according to one mode of counting, the seventh) topic in the third section of JAIMINI's seventh chapter. See JIMUTA-VAHANA, Ch. 11. Sect. 5.

Since the same precept authorised the occasional construction of the altar.] Since one precept commands it at a *Chaturmasya* sacrifice, and another forbids it at two of the periods of that sacrifice; the injunction, contrasted with the prohibition, seems to imply an option in this case: but, not being contrasted with any other rule, it becomes a cogent precept in the instance of the two other periods: and thus the rule being cogent in one case and not in the other, is variable in its import and effect.

\* *Mimansa*, 7. 3. 6.

constant rule; and that the injunction, "prepare the *uttara-vedi* at this sacrifice," commands its construction at the two middle periods namely the *Varuna-praghasa* and *Sacamed'ha* with a due regard to that explanatory recital.

35. As for the doctrine, that, from the text of MENU ("Of him, who leaves no son, the father shall take the inheritance, or the brothers,"\*) as well as from that of SANC'HA ("The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it: or his eldest wife."†) The succession of brothers, to the estate of one who leaves no male issue, is deduced: and that a wife obtains a sufficiency for her support, under the text "Let them allow a maintenance to his women for life:"‡ this being determined, if a rich man die, leaving no male issue, the wife takes as much as is adequate to her subsistence, and the brethren take the rest; but, if the estate be barely enough for the support of the widow, or less than enough, this text ("The wife and the daughters also;" ||) is propounded, on the controverted question whether the widow or the brothers inherit, to show, that the first claim prevails. This opinion the reverend teacher does not tolerate: for he interprets the text, "Of him who leaves no son, the father shall take the inheritance, or the brothers;" ¶ as not relating to the order of succession, since it declares an alternative; but as intended merely to show the competency for inheriting, and as applicable when the

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#### ANNOTATIONS.

35. *On the controverted question whether the widow or the brothers inherit*] Whether the widow inherits, as provided by NAREDA: or the brothers succeed conformably with the texts of MENU and SANC'HA. BALAM-BHATTA.

*This opinion the reverend teacher does not tolerate.*] Meaning VISWARUPA, Subod'hini, and BALAM-BHATTA.

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\* Vide, § 7.

† Ibid.

‡ NAREDA. Vide § 7.

|| YAJNYAWALCYA. Vide § 2.

¶ MENU, Vide § 7.

preferable claimants, the widow and the rest, fail. The text of SANC'HA too relates to a reunited brother.

36. Besides it does not appear either from this passage [of YAJNYAWALOKYA \*] or from the context, that it is relative to an inconsiderable estate. If the concluding sentence, "On the failure of the first among these, the next in order is heir;" † be restricted to the case of a small property, by reference to another passage, in two instances (of the widow and of the daughters,) but relate to wealth generally in the other instances (of the father and the rest,) the consequent defect of *variableness in the precept* (§ 33) affects this interpretation.

37. "If a woman, becoming a widow in her youth, be headstrong, a maintenance must in that case be given to her for the support of life." ‡ This passage of HARITA is intended for a denial of the right of a widow suspected of incontinency, to take the whole estate. From this very passage [of HARITA ||], it appears that a widow, not suspected of misconduct, has a right to take the whole property.

38. With the same view, SANC'HA has said "Or his eldest wife." (§ 7) Being eldest by good qualities, and not supposed likely to be guilty of incontinency, she takes the whole wealth; and, like a mother, maintains any other headstrong wife [of her husband]. Thus all is unexceptionable

39. Therefore it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who, being separated from his coheirs and not subsequently reunited with them, dies leaving no male issue

#### ANNOTATION.

*The text of Sanc'ha relates to a reunited brother* ] It relates to the case of a brother, who, after separation, becomes associated with his coheirs, from affection or any other motive. *Subod'hini*

\* *Subod'hini*.

† Vide § 2.

‡ In the *Vivada-chintamani* this passage is read without the conditional particle viz "A woman .. is headstrong; but a maintenance must ever be given to her....."

|| BALAM-BHATTA.

## SECTION II.

*Right of the daughters and daughter's sons.*

1. On failure of her, the daughters inherit. They are named in the plural number (Section 1. § 2) to suggest the equal or unequal participation of daughters' alike or dissimilar by class.

2. Thus CATYAYANA says, "Let the widow succeed to her husband's wealth, provided she be chaste; and, in default of her, let the daughter inherit, if unmarried." \* Also VRIHASPATI: "The wife is pronounced successor to the wealth of her husband; and, in her default, the daughter. As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"

3. If there be competition between a married and an unmarried daughter, the unmarried one takes the succession under the specific provisions of the text above cited ("in default of her, let the daughter inherit, if unmarried.")

4. If the competition be between an unprovided and enriched daughter, the unprovided one inherits; but on failure of such, the enriched one succeeds: for the text of GAUTAMA is equally applicable to the paternal,

## ANNOTATIONS.

1. *They are named in the plural number.*] Here female issue is signified by the original word "daughter" (*duhitri*;) and that is applicable, indifferently, to such as belong to the same or to different tribes. Plurality is denoted by the termination of the plural number, (as in *duhitaras*;) which includes, without inconsistency, those who are dissimilar from the parent. Therefore daughters, alike or different by class, are indicated by the original word and its termination. They share equal or unequal portions in the order before mentioned; namely four shares, three, two or one (C. 1. Sect. 8. § 1.) *Subod'hini*.

4. *The text of Gautama is equally applicable to the paternal .....estate* The meaning is this: since the daughter's right is

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\* Vide *supra*. Sect. 1. § 6.



as to the maternal estate. "A woman's separate property goes to her daughters, unmarried or unprovided." \*

5. It must not be supposed, that this relates to the appointed daughter: for, in treating of male issue, she and her son have been pronounced equal to the legitimate son ("Equal to him is the son of an appointed daughter," † or the daughter appointed to be a son. ‡)

6. By the import of the particle "also" (Sect. I. § 2) the daughter's son succeeds to the estate on failure of daughters. Thus VISHNU says, "If a man leave neither son; nor son's son, nor [wife, nor female] || issue, the daughter's sons shall take his wealth. For, in regard to the obsequies of ancestors, daughter's sons are considered as son's sons," ¶ MENU likewise declares, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes the grandsire of a son's son: let that son give the funeral oblation and possess the inheritance." \*\*

#### ANNOTATIONS.

declared with reference to a woman's peculiar property, but it is not intended by using the word "woman's" to restrict it positively to that single object, the parity of reasoning holds good. *Subodhani.*

5 *For, in treating for male issue, she and her son have been pronounced, &c.* ] Since she has been noticed while treating of male issue, the introduction of her in this place would be improper. *Subodhani.*

6. *The daughter's son succeeds to the estate on failure of daughters* ] According to the commentary of BALAM-BHATTA, the daughter's daughter inherits in default of daughter's sons. He grounds this opinion, for which however there is no authority in VIJNYANESWARA's text, upon the analogy, which this author had admitted in another case, between the succession to a woman's separate property, and the inheritance of the paternal estate. (Vide § 4.)

\* GAULAMA, 28 22. Vide supra C. I. Sect. 3. § 11

† C. I. Sect. 11 § 1 ‡ C. I. Sect. 11. § 3. || BALAM-BHATTA.

¶ Not found in VISHNU's institutes, but cited under his name in the *Smriti-chandrika*.

\*\* MENU, 9. 136.

## SECTION III.

*Right of the Parents.*

1. On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property.

2. Although the order, in which parents succeed to the estate, do not clearly appear [from the tenor of the text; Sect. 1. § 2] since a conjunctive compound is declared to present the meaning of its several terms at once;\* and the omission of one term and retention of the other constitute an exception† to that [complex expression;] yet, as the word 'mother' stands first in the phrase into which that is resolvable, and is first in the regular compound (*matapitarau*) 'mother and father'‡ when not reduced [to the simpler form *pitarau* 'parents'] by the omission of one term and retention of the other;

## ANNOTATIONS.

2. *Although the order.....do not clearly appear.*] It is declared, that the two parents are successors to the property, if there be no daughter nor daughter's son. Since the term (*pitarau*) 'parents' is formed by omitting one and retaining the other member of a complex expression (mother and father;) shall they conjointly take the estate, or severally? and is the order of succession optional, or fixed and regulated? The author replies to these questions. *Subod'hini.*

*A conjunctive compound is declared, &c.*] A compound term is formed, as directed by PANINI and his commentators, || when two or more nouns occur with the import of the conjunction 'and,' in two of its senses (*viz.*, reciprocation and cumulation. ¶) This is limited by the emendatory rule of CATTAYANA to the case where the sense conveyed by each word is presented at once: while the same terms, connected in a phrase by the conjunction copulative, would present the sense of each successively.

*The omission of one term and retention of the other constitute an exception.*] When the word *pitri* 'father' occurs with *matrī*

\* *Vartica*, 1. on PANINI, 2. 2. 29.

† PANINI, 1. 2. 70.

‡ *Vartica*, 3. on PANINI, 2. 2. 34.

|| *Vide infra*. Sect 11. § 20.

¶ See Dictionary of AMERA, Book 3. Chap. 4. Sect. 28. Verse 2.

it follows from the order of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance ; and, on failure of her, the father.

3. Besides the father is a common parent to other sons, but the mother is not so : and, since her propinquity is consequently greatest, it is fit, that she should take the

#### ANNOTATIONS.

'mother,' it may be retained and the other term be rejected. This is an exception to the general rule of composition. It is optional, and the regular form may be retained in its stead. Ex *Pitarau* 'two parents ;' or *Matupitarau* 'mother and father' PANINI, 1. 2. 70 and 2. 2 29—34.

*The word mothers, and first in the phrase into which that is resolvable.]* The compound term, whether reduced to the simpler expression or retaining its complex form, is resolvable into the phrase *mata cha pita cha* 'both the mother and the father.' This, however, is only the customary order of terms, not specially enjoined by any rule of syntax.

*Is first in the regular compound.]* Conformably with one of CATYAYANA'S emendatory rules on PANINI'S canon for the collocation of terms in composition. (2 2. 34.) That rule requires the most revered object to have precedence and the example of the rule, as given in PATANJALI'S *Mahabhashya* and VAMANA'S *Castiavritti*, is this very compound term *matupitarau* 'mother and father.' The commentators, CATYATA and HARADAITA, assign reasons why a mother is considered to be more venerable than a father.

*It follows, from the order of the terms.]* The compound terms *matupitarau* 'mother and father,' as well as the abridged and simpler expression, *pitarau* 'parents,' is resolvable into the same phrase *mata cha pita cha* 'both the mother and father.' Thus, in every form of expression, 'mother' stands first. Hence the author infers that the mother's priority in regard to succession to wealth is intended by the text (Sect. 1. § 2.)

3. *The father is a common parent to other sons.]* The matter is, in respect of sons, not a common parent to several sets of them ; and her propinquity is therefore more immediate, compared with the

estate in the first instance, conformably with the text "To the nearest *sapinda*, the inheritance next belongs."

4. Nor is the claim in virtue of propinquity restricted to (*sapindas*) kinsmen allied by funeral oblations: but on the contrary, it appears from this very text, (§ 3) that the rule of propinquity is effectual, without any exception, in the case of (*samanodacus*) kindred connected by libations of water, as well as other relatives, when they appear to have a claim to the succession.

5. Therefore, since the mother is the nearest of the two parents, it is most fit, that she should take the estate.

#### ANNOTATIONS.

father's. But his paternity is common; since he may have sons by women of equal rank with himself as well as children by wives of the *Cshatrya* and other inferior tribes; and his nearness is therefore mediate, in comparison of the mother's. The mother consequently is nearest to her child; and she succeeds to the estate in the first instance, since it is ordained by a passage of MENU, that the person who is nearest of kin, shall have the property. *Subodhini*.

5. *On failure of her, the father is successor to the property.*] The commentator, BALAM-BHATTA, is of opinion, that the father should inherit first and afterwards the mother; upon the analogy of more distant kindred, where the paternal line has invariably the preference before the maternal kindred; and upon the authority of several express passages of law. NANDA PANDITA, author of commentaries on the *Mitacshara* and on the Institutes of VISHNU, had before maintained the same opinion. But the elder commentator of the *Mitacshara*, VISWESWARA-BHATTA has in this instance followed the text of his author in his own treatise entitled *Madana-Parijata*, and has supported VIJNYANESWARA's argument both there and in his commentary named *Subodhini*. Much diversity of opinion does indeed prevail on this question. SRICARA maintains, that the father and mother inherit together: and the great majority of writers of eminence (as APARANCA and CAMALACARA, and the authors of the *Smriti-chandrica*, *Madana-ratna*, *Vyavahara-mayudha*, &c.) gives the father the preference before the mother. JIMUTA-VAHANA, and RUGHUNUNDANA have adopted this doctrine. But VACHESPATI

But, on failure of her, the father is successor to the property.

## SECTION IV.

### *Right of the Brothers.*

1. On failure of the father, brethren share the estate. Accordingly MENU says, "Of him, who leaves no son, the father shall take the inheritance or the brothers."\*

2. It has been argued by D'HARESWARA, that, under the following text of MENU, "Of a son dying childless, the mother shall take the estate; and, the mother also being dead, the father's mother shall take the heritage:"† 'even while the father is living, if the mother be dead, the father's mother, or in other words the paternal grandmother, and not the father himself, shall take the succession: because wealth, devolving upon him, may go to sons

### ANNOTATIONS.

MISRA, on the contrary, concurs with the *Mitacshara* in placing the mother before the father; being guided by an erroneous reading of the text of VISHNU (Sect. 1. § 6.) as is remarked in the *Viramirodaya*. The author of the latter work proposes to reconcile these contradictions by a personal distinction. If the mother be individually more venerable than the father, she inherits; if she be less so, the father takes the inheritance.

1. *Brethren.*] The commentators, NANDA PANDITA and BALAMBHATTA, consider this as intending 'brothers and sisters,' in the same manner in which "parents" have been explained 'mother and father' (Sect. 3. § 2.), and conformably with an express rule of grammar (PANINI, 1. 2. 68.) They observe, that the brother inherits first: and, in his default, the sister. This opinion is controverted by CAMALACARA and by the author of the *Vyavahara-mayūḥa*.

2. *It has been argued by D'HARESWARA.*] It had been shown (Sect. 3), that the father inherits on failure of the mother. But that is stated otherwise by different authors. To refute the opinion maintained by one of them, the author reverts to the subject by a retrospect analogous to the backward look of the lion. *Subod'hini* and BALAMBHATTA.

\* MENU, 9. 185. Vide Sect. 1. § 7. † MENU, 9. 217. Vide Sect. 1. § 7.

dissimilar by class; but what is inherited by the paternal grandmother, goes to such only as appertain to the same tribe: and therefore the paternal grandmother takes the estate.

3. The holy teacher (VISWARUPA\*) does not assent to that doctrine: because the heritable right of sons even dissimilar by class has been expressly ordained by a passage above cited: "The sons of a *Brahmana*, in the several tribes, have four shares, or two, or one." † *or three*.

4. But the passage of MENU, expressing that "The property of a *Brahmana* shall never be taken by the king," ‡ intends the sovereign, not a son [of the late owner by a woman of the royal or military tribe].

5. Among brothers, such, as are of the whole blood, take the inheritance in the first instance, under the text before cited: "To the nearest *supinda*, the inheritance

#### ANNOTATIONS.

*Because wealth, devolving on him, may go to sons dissimilar.]* The meaning is this: if the succession be taken by the father, the property becomes a paternal estate, and may devolve on his sons whether belonging to the *Murdu'havasicta* [or another mixt] tribe or to his own class. But, if it be taken by the grandmother, it becomes a maternal estate and devolves on persons of the same tribe, namely her daughters; or successively on failure of them, her daughter's sons, her own sons, and so forth. *Subod'hini* and BALAM-BHATTA.

4. *Intends the sovereign, not a son.]* It does not prohibit the succession of a *Brahmana*'s son by a *Cshatriya* wife, denominated king as being of his mother's tribe, which is the royal or military one. But it relates to an escheat to the sovereign. Therefore it is not an exception to the passage cited in the preceding paragraph: and VISWARUPA's reasoning holds good, that 'D'HAREAWARA's objection would be valid, if there were any harm in the ultimate succession of sons dissimilar by class. But that is not the case. On the contrary, they are expressly pronounced by the text here cited, to be partakers of inheritance.' *Subod'hini*.

\* The name is supplied by the *Subod'hini*.

† YAJNYALWACYA, 2. 126. Vide supra. C. 1. Sect. 8. § 1.

‡ MENU, 9, 189. Vide infra Sect. 7. § 5.      || BALAM-BHATTA.

next belongs."\* Since those of the half blood are remote through the difference of the mothers.

6. If there be no uterine (or whole) brothers, those by different mothers inherit the estate.

7. On failure of brothers also, their sons share the heritage in the order of the respective fathers.

8. In case of competition between brothers and nephews, the nephews have no title to the succession: for their right of inheritance is declared to be on failure of brothers ("both parents, brothers likewise, and their sons." Sect. 1. § 2. †)

9. However, when a brother has died leaving no male issue (nor other nearer heir, ‡) and the estate has consequently devolved on his brothers indifferently, if any one of them die before a partition of their brother's estate takes place, his sons do in that case acquire a title through their father: and it is fit, therefore, that a share should be allotted to them, in their father's right, at a subsequent distribution of the property between them and the surviving brothers.

#### ANNOTATIONS.

6. *If there be no uterine (or whole) brothers, those by different mothers inherit.*] The author of the *Vyavahara-mayuc'ha* censures the preference here given to the brothers of the half blood before the nephews, being sons of brothers of the whole blood.

7. *Their sons share the heritage.*] Including, say NANDA PANDITA and BALAM-BHATTA, the daughters as well as the sons of brothers, and the sons and daughters of sisters. This consequently will comprehend all nephews and nieces.

*In the order of the respective fathers.*] In their order as brothers of the whole blood, and of the half blood. BALAM-BHATTA.

By analogy to the case of grandsons by different fathers (Chap. 1. Sect. 8.), the distribution of shares shall be made, through allotments to their respective fathers, and not in their own right, whether there be one, two, or many sons of each brother. *Subo'dhini*.

That is wrong: for the brethren had not a vested interest in their brother's wealth before their decease; property was only vested in the nephews by the owner's demise. BALAM-BHATTA.

\* MENU, 9. 187. Vide Sect. § 3. † *Subo'dhini* and BALAM-BHATTA.

‡ BALAM-BHATTA.

## SECTION V.

*Succession of kindred of the same family name : termed Gotraja, or gentiles.*

1. If there be not even brother's sons, gentiles share the estate. Gentiles are the paternal grandmother and relations connected by funeral oblations of food and libations of water.

2. In the first place the paternal grandmother takes the inheritance. The paternal grandmother's succession immediately after the mother, was seemingly suggested by the text before cited, "And, the mother also being dead, the father's mother shall take the heritage :"\* no place, however, is found for her in the compact series of heirs from the father to the nephew : and that text ("the father's mother shall take the heritage") is intended only to indicate her general competency for inheritance. She must, therefore, of course succeed immediately after the nephew ; and thus there is no contradiction.

3. On failure of the paternal grandmother, the (*gotraja*) kinsmen sprung from the same family with the

## ANNOTATIONS.

1. *Gentiles.*] *Gotraja* or persons belonging to the same general family (*Gotra*) distinguished by a common name : these answer nearly to the *Gentiles* of the *Roman* law.

2. *She must therefore, of course succeed.*] Some copies of the *Mitacshara* read this passage differently. The variation is noticed in the commentary of BALAM-BHATTA, viz., 'She succeeds, after the preceding claimants, if they be dead,' *uparitana-mritanantaram* instead of *utcarshe tat sutanantaram*. The commentary remarks that the 'preceding (*uparitana*) claimants' are the father and the rest down to the brother's son.

3. *On failure of the paternal grandmother...the paternal grandfather.*] BALAM-BHATTA insists, that the grandfather inherits before the grandmother, as the father before the mother. See Section 3.

\* Sect. 1. §. 7.



deceased and (*sapinda*) connected by funeral oblations namely the paternal grandfather and the rest, inherit the estate. For kinsmen sprung from a different family, but connected by funeral oblations, are indicated by the term cognate (*bandhu*, Sect. 6.)

4. Here, on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons.

5. On failure of the paternal grandfather's line, the paternal great grandmother, the great grandfather, his sons and their issue, inherit. In this manner must be understood the succession of kindred belonging to the same general family and connected by funeral oblation.

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#### ANNOTATIONS.

5. *In this manner must be understood the succession of kindred.*] The *Subod'hini*, commenting on the first words of the following section, carries the enumeration a little further, viz., 'the paternal great grandfather's mother, great grandfather's father, great grandfather's brothers and their sons. The paternal great grandfather's grandmother, great grandfather's grandfather, great grandfather's uncles and their sons. The same analogy holds in the succession of kindred connected by a common libation of water.'

The scholiast of VISHNU, who is also one of the commentators of the *Mitacshara*, states otherwise the succession of the near and distant kindred, in expounding the passage of VISHNU "if no brother's son exist, it passes to kinsmen (*bandhu*); in their default, it devolves on relations (*saculya*:)"\* where BALAM-BHATTA, on the authority of a reading found, in the *Madana-ratna*, proposes to transpose the terms *bandhu* and *saculya*; for the purpose of reconciling VISHNU with YAJNYAWALKYA, by interpreting *saculya* in the sense of *gotraja* or kinsmen sprung from the same family. NANDA PANDITA, preserving the common reading, says 'kinsmen (*bandhu*) are *sapindas*;' and these may belong to the same general family or not. First those of the same general family (*sogotra*) are heirs.

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\* VISHNU, 17. 10.—11.

6. If there be none such, the succession devolves on kindred connected by libations of water : and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food : or else, as far as the limits of knowledge as to birth and name extend. Accordingly *Vrihat-MENU* says "The relation of the *sapindas*, kindred connected by the funeral oblation, ceases with the seventh person ; and that of *samanodacas*, or those connected by a common libation of water, extend to the

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#### ANNOTATIONS.

They are three, the father, paternal grandfather, and great grandfather ; as also three descendants of each. The order is this : In the father's line, on failure of the brother's son, the brother's son's son is heir. In default of him, the paternal grandfather, his son and grandson. Failing these, the paternal great grandfather, his son and grandson. In this manner the succession passes to the fourth degree inclusive ; and not to the fifth : for the text expresses "The fifth has no concern with the funeral oblations." \* The daughters of the father and other ancestors must be admitted, like the daughters of the man himself, and for the same reason. 'On failure of the father's kindred connected by funeral oblations, the mother's kindred are heirs : namely the maternal grandfather, the maternal uncle and his son ; and so forth. In default of these, the successors are the mother's sister, her son and the rest.'

The commentator takes occasion to censure an interpretation, which corresponds with that of the *Mitacshara* as delivered in the following section (S. 6 § 1. ) ; and according to which the cognate kindred of the man himself, of his father and of his mother are the sons of his father's sister and so forth : because it would follow, that the father's sister's son and the rest would inherit, although the man's own sister and sister's sons were living. *BALAM-BHATTA*, however, repels this objection by the remark, that the sister and sister's sons have been already noticed as next in succession to the brother and brother's sons : which is indeed *NANDA PANDITA*'s own doctrine.

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\* *MENU*, 9. 186.

fourteenth degree : or as some affirm, it reaches as far as the memory of birth and name extends. This is signified by *gotra* or the relation of family name.”\*

## SECTION VI.

### *Of the succession of cognate kindred, bandhu.*

1. On failure of gentiles, the cognates are heirs. Cognates are of three kinds ; related to the person himself, to his father, or to his mother : as is declared by the following text, “The sons of his own father’s sister, the sons of his own mother’s sister, and the sons of his own maternal uncle, must be considered as his own cognate kindred. The sons of his father’s paternal aunt,

### ANNOTATIONS.

He adds, ‘after the heirs abovementioned, the *saculya* or distant kinsman is entitled to the succession : meaning a relation in the fifth or other remoter degree.’

This whole order of succession, it may be observed, differs materially from that which is taught in the text of the *Mitacshara*. On the other hand, the author of the *Viramitrodaya* has exactly followed the *Mitacshara* ; and so has CAMALACARA : and it is also confirmed by MAD’HAVA ACHARYA, in the *Vyavahara Mad’hava*, as well as by the *Smriti-chandrica*.

But the author of the *Vyavahara-myu’cha* contends for a different series of heirs after the brother’s son : ‘ 1st the paternal grandmother ; 2nd the sister ; 3rd the paternal grandfather and the brother of the half blood, as equally near of kin ; 4th the paternal great grandfather, the paternal uncle and the son of a brother of the half blood, sharing together as in the same degree of affinity.’ He has not pursued the enumeration further ; and the principle stated by him, nearness of kin, does not clearly indicate the rule of continuation of this series.

1. *The cognates are heirs.*] *Band’hu*, cognate or distant kin, corresponding nearly to the *Cognati* of the Roman law.

\* The first part of this passage occurs in MENU’S institutes. 5. 60. The remainder of the text differs.

the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncle, must be reckoned mother's cognate."\*

2. Here, by reason of near affinity, the cognate kindred of the deceased himself, are his successors in the first instance : on failure of them, his father's cognate kindred : or, if there be none, his mother's cognate kindred. This must be understood to be the order of succession here intended.

## SECTION VII.

### *On the succession of strangers upon failure of the kindred.*

1. If there be no relations of the deceased, the preceptor, or, on failure of him, the pupil, inherits, by the text of APASTAMBA. "If there be no male issue, the nearest kinsman inherits : or, in default of kindred, the preceptor ; or failing him, the disciple."

2. If there be no pupil, the fellow student is the successor. He, who received his investiture, or instruction in reading or in the knowledge of the sense of scripture, from the same preceptor, is a fellow student.

### ANNOTATIONS.

*Cognates are of three kinds.*] BALAM-BHATTA notices a variation in the reading, *band'havh* for *band'havah*. It produces no essential difference in the interpretation.

*Related to the person himself, or to his mother.*] APARARCA, as remarked by CAMALACARA, disallows the two last classes of cognate kindred, as having no concern with inheritance ; and restricts the term *band'hu*, in the text, to the kindred of the owner himself. The author of the *Vyavahara-mayuc'ha* confutes that restriction.

2. *This must be understood to be the order of succession.*] See a note at the close of the last section.

\* The text is seemingly ascribed by the commentator BALAM-BHATTA to *Vridh'ha SATATAPA*. But it is quoted in the *Vyavahara-Mad'hava* as a text of BAUDHAYANA.

3. If there be no fellow students, some learned and venerable priest should take the property of a *Brahmana*, under the text of GAUTAMA : " Venerable priests should share the wealth of a *Brahmana*, who leaves no issue. " \*

4. For want of such successors, any *Brahmana* may be the heir. So MENU declares : " On failure of all those, the lawful heirs are such *Brahmanas*, as have read the three *Vedas*, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost. " †

5. Never shall a king take the wealth of a priest : for the next of MENU forbids it : " The property of a *Brahmana* shall never be taken by the king : this is a fixed law. " ‡ It is also declared by NAREDA : " If there be no heir of a *Brahmana's* wealth, on his demise, it must be given to a *Brahmana*. Otherwise the king is tainted with sin. " ||

6. But the king, and not a priest, may take the estate of a *Cshatriya* or other person of an inferior tribe, on failure of heirs down to the fellow student. So MENU ordains ; " But the wealth of the other classes, on failure of all [heirs,] the king may take. " ¶

## SECTION VIII.

### *On succession to the property of a hermit or of an ascetic.*

1. It has been declared, that sons and grandsons [or great grandsons \*\*] take the heritage ; or, on failure of them, the widow or other successors. The author now propounds an exception to both those laws : " The heirs of a hermit, of an ascetic, and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness. " ††

### ANNOTATIONS.

1. " *A virtuous pupil.* " ] The condition, that he be virtuous is intended generally. Hence the preceptor and the fellow hermit are successors in their respective cases, provided their conduct be

\* GAUTAMA, 28. 39.

† MENU, 9. 188.

‡ MENU, 9. 189. || Not found in the institutes of NAREDA.

¶ MENU, 9. 189. \*\* BALAM-BHATTA. †† YAJNYAWALKYA. 2. 138.

2. The heirs to the property of a hermit, of an ascetic, and of a student in theology, are in order (that is, in the inverse order), the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

3. The student (*brahmechhari*) must be a professed or perpetual one : for the mother and the rest of the natural heirs take the property of a temporary student ; and the preceptor is declared to be heir to a professed student as an exception [to the claim of the mother and the rest.\*]

4. A virtuous pupil takes the property of a *yati* or ascetic. The virtuous pupil, again, is one who is assiduous in the study of theology, in retaining the holy science, and in practising its ordinances. For a person, whose conduct is bad, is unworthy of the inheritance, were he even the preceptor or [standing in] any other [venerable relation.]

5. A spiritual brother and associate in holiness takes the goods of a hermit (*vanaprast'ha*.) A spiritual brother is one who is engaged as a brotherly companion [having consented to become so.†] An associate in holiness is one appertaining to the same hermitage. Being a spiritual companion, and belonging to the same hermitage, he is a spiritual brother associate in holiness.

6. But, on failure of these (namely, the preceptor and the rest,) any one associated in holiness takes the goods ; even though sons and other natural heirs exist.

7. Are not those, who have entered into a religious profession, unconcerned with hereditary property ? since VASISHT'HA declares, "They, who have entered into

#### ANNOTATIONS.

unexceptionable. With a view to this, YAJNYWALKYA has placed the words "virtuous pupil" in the middle of the text, to indicate the connection of the epithet with the preceding and following terms. *Subod'hini*, &c.

4. A *yati* or *ascetic*.] The term 'ascetic' is in this translation used for the *yati* or *sannyasi* ; and 'hermit' or 'anchoret' for the *vanaprast'ha*. In former translations, as in the version of MENTY by Sir WILLIAM JONES, the two last terms were applied severally to the two orders of devotion.

\* *Subod'hini* .

† *Subod'hini*.

another order, are debarred from shares." \* How then can there be a partition of their property? Nor has a professed student a right to his own acquired wealth: for the acceptance of presents, and other means of acquisition, [as officiating at sacrifices and so forth,†] are forbidden to him. And, since GAUTAMA ordains, that "A mendicant shall have no hoard;" ‡ the mendicant also can have no effects by himself acquired.

8. The answer is, a hermit may have property: for the text [of YAJNYAWALCYA] expresses "The hermit may make a hoard of things sufficient for a day, a month, six months, or a year; and, in the month of *Aswina*, he should abandon [the residue of] what has been collected."|| The ascetic too has clothes, books and other requisite articles: for a passage [of the *Veda* ¶] directs, that "he should wear clothes to cover his privy parts;" and a text [of law \*\*] prescribes, that "he should take the requisites for his austerities and his sandals." The professed student likewise has clothes to cover his body; and he possesses also other effects.

9. It was therefore proper to explain the partition or inheritance of such property.

## SECTION IX.

### *On the reunion of kinsmen after partition.*

1. The author next propounds an exception to the maxim, that the wife and certain other heirs succeed to the estate of one who dies leaving no male issue. "A reunited [brother] shall keep the share of his reunited [coheir,] who is deceased; or shall deliver it to [a son subsequently] born." ††

2. Effects, which had been divided and which are again mixed together, are termed reunited. He to whom such appertain, is a reunited parcener.

3. That cannot take place with any person indifferently; but only with a father, a brother, or a paternal

\* VASISHT'HA, 17. 43. Vide infra. Sect. 10. § 3. † BALAM-BHATTA.

‡ GAUTAMA. 3. 6. || YAJNYAWALCYA, 3. 47. See MENU, 6. 15.

¶ BALAM-BHATTA.

\*\* BALAM-BHATTA.

†† YAJNYAWALCYA, 2. 139.

uncle: as VRIHASPATI declares. "He, who being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed reunited."

4. The share or allotment of such a reunited parcener deceased, must be delivered by the surviving reunited parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. Or, on failure of male issue, he, and not the widow, nor any other heirs, shall take the inheritance.

5. The author states exception to the rule, that a reunited brother shall keep the share of his reunited coheir: "But an uterine [or whole] brother shall thus retain or deliver the allotment of his uterine relation." \*

6. The words "reunited brother" and "reunited coheir" are understood. Hence the construction, as in the preceding part of the text is this: The allotment of a reunited brother of the whole blood, who is deceased, shall be delivered, by the surviving reunited brother of the whole blood, to a son born subsequently. But, on failure of such issue, he shall retain it. Thus, if there be brothers of the whole blood and half blood, an uterine [or whole] brother, being a reunited parcener, not a half brother who is so, takes the estate of the reunited uterine brother. This is an exception to what had been before said (§ 1.)

7. Next, in answer to the inquiry, who shall take the succession when a reunited parcener dies leaving no male issue, and there exists a whole brother not reunited, as well as a half brother who was associated with the deceased? the author delivers a reason why both shall take and divide

#### ANNOTATIONS.

4. *Or, on failure of male issue, he, and not the widow, &c., shall take the inheritance.*] The singular number is here indeterminate. Therefore, if there be two or more reunited parceners, they shall divide the estate. A maintenance must be allowed to the widow. BALAM-BHATTA.

6. *A son born subsequently.*] The widow's pregnancy not having been apparent at the time of partition.



the estate. "A half brother being again associated, may take the succession, not a half brother though not reunited : but one, united [by blood, though not by coparcenery,] may obtain the property ; and not [exclusively] the son of a different mother."\*

8. A half brother, (meaning one born of a rival wife,) being a reunited parcener, takes the estate ; but a half brother, who was not reunited, does not obtain the goods. Thus, by the direct provisions of the text, and by the exception, reunion is shown to be a reason for a half brother's succession.

9. The term "not reunited" is connected also with what follows : and hence, even one who was not again associated, may take the effects of a deceased reunited parcener. Who is he? The author replies : "one united ;" that is, one united by the identity of the womb [in which he was conceived ;] in other words, an uterine or whole brother. It is thus declared, that relation by the whole blood is a reason for the succession of the brother, though not reunited in coparcenery.

10. The term "united" likewise is connected with what follows : and here it signifies reunited [as a coparcener.] The words "not the son of a different mother" must

#### ANNOTATIONS.

7. "*A half brother, being again associated, &c.*" The text admits of different interpretations besides variations in the reading. See JIMUTAHYA-NANA, C. 11. Sect. 5. § 13—14.

9. *The term "not reunited" is connected also with what follows.* It is connected with both phrases, like a crow looking two ways at once. Hence it constitutes, with what follows, another sentence. *Subod'hini.*

*One united by the identity of the womb.* In like manner, a father, though not reunited with the family, shall take a share of the property of his son ; and a son, though not reunited, shall receive a share of the estate of his father, from a reunited parcener. This, according to the author of the *Subod'hini*, is implied ; the *Veda* describing the wife as becoming a mother to her husband, who is identified with his offspring. But BALAM-BHATTA does not allow the inference.

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\* YAJNYAWALKYA. 2. 140.

be interpreted by supplying the affirmative particle (*eva*) understood. Though he be a reunited parcener, yet, being issue of a different mother, he shall not exclusively take the estate of his associated co-heir.

11. Thus by the occurrence of the word "though" (*api*) in one sentence ("though not reunited," &c. § 7) and by the denial implied in the restrictive affirmation (*eva* "exclusively,") understood in the other, ("one united may take the property, and not *exclusively* the son of a different mother;") it is shown, that a whole brother not reunited, and a half brother being reunited, shall take and share the estate : for the reasons of both rights may subsist at the same instant.

12. This is made clear by MENU, who, after premising partition among reunited parceners ("If brethren, once divided and living again together as parceners, make a second partition ;"\*) declares "should the eldest or youngest of several brothers be deprived of his allotment at the distribution, or should any one of them die, his share shall not be lost ; but his uterine brothers and sisters, and such brothers as were reunited after a separation, shall assemble together and divide his share equally."†

13. Among reunited brothers, if the eldest, the youngest or the middlemost, at the delivery of shares, (for the indeclinable termination of the word denotes any case ;) that is, at the time of making a partition, lose, or forfeit his share by his entrance into another order [that of a hermit or ascetic,‡] or by the guilt of sacrilege, or by any other disqualification ; or if he be dead ; his allotment does not lapse, but shall be set apart. The meaning is, that the reunited parceners shall not exclusively take it. The author states the appropriation of the share so reserved : "His uterine brothers and sisters, &c." (§ 12) Brothers of the whole blood, or by the same mother,

#### ANNOTATIONS.

11. *The reasons of both rights may subsist at the same instant.* The reunion of the half brother in family partnership, and the whole brothers' relation by blood. BALAM BHATTA.

\* MENU, 9. 210.

† BALAM BHATTA.

‡ MENU, 9. 211—212.

though not reunited, share that allotment so set apart. Even though they had gone to a different country, still, returning thence and assembling together, they share it : and that "equally ;" not by a distribution of greater and less shares. Brothers of the half blood, who were reunited after separation, and sisters by the same mother, likewise participate. They inherit the estate and divide it in equal shares.

## SECTION X.

### *On exclusion from inheritance.*

1. The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the reunited parcener. "An impotent person, an outcast, and his issue, one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others [similarly disqualified,] must be maintained ; excluding them, however from participation." \*

2. "An impotent person," one of the third gender (or neuter sex). "An outcast ;" one guilty of sacrilege or other heinous crime. "His issue ;" the offspring of an outcast. "Lame ;" deprived of the use of his feet. "A madman ;" affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from delirium, or from planetary influence. "An idiot ;" a person deprived

### ANNOTATIONS.

13. *They inherit the estate and divide it in equal shares.*] This supposes the brothers of the half blood to belong to the same tribe. But, if they are of different tribes, the shares are four, three, two or one, in the order of the classes ; since there is no reason for restricting that rule of distribution. BALAM-BHATTA.

1. "*An impotent person, an outcast, and his issue.*"] The initial words are transposed by JIMUTA-VAHANA. C. 5. § 10.

"*An impotent person.*"] Whether naturally so, or by castration. BALAM-BHATTA.

of the internal faculty : meaning one incapable of discriminating right from wrong. "Blind ;" destitute of the visual organ. "Afflicted with an incurable disease" affected by an irremediable distemper, such as marasmus or the like.

3. Under the term "others" are comprehended one who has entered into an order of devotion, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. Thus VASISHT'HA says, "They, who have entered into another order are debarred from shares."\* NAREDA also declares, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice, take no shares of the inheritance even though they be legitimate : much less, if they be sons of the wife by an appointed kinsman."† MENU likewise ordains, "Impotent persons and outcasts are excluded from a share of the heritage ; and so are persons born blind and deaf, as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb.]"‡

4. Those who have lost a sense or a limb.] Any person, who is deprived of an organ [of sense or action] by disease or other cause, is said to have lost that sense or limb.

5. These persons (the impotent man and the rest) are excluded from participation. They do not share the estate. They must be supported by an allowance of food and raiment only : and the penalty of degradation is incurred, if they be not maintained. For MENU says, "But it is fit, that a wise man should give all of them food and raiment without stint to the best of his power : for he who gives

#### ANNOTATIONS.

*The offspring of an outcast.]* Of one who has not performed the requisite penance and expiation. BALAM-BHATTA.

3. "*They who have entered into another order.*" Into one of devotion. The orders of devotion are, 1st, that of the professed or perpetual student ; 2d, that of the hermit ; 3d, the last order or that of the ascetic. BALAM-BHATTA.

\* VASISHT'HA, 17. 43.

† NAREDA, 13, 21.

‡ MENU, 9. 201.

it not, shall be deemed an outcast." \* "Without stint" signifies 'for life.'

6. They are debarred of their shares, if their disqualification arose before the division of the property. But one, already separated from his coheirs, is not deprived of his allotment.

7. If the defect be removed by medicaments or other means [as penance and atonement †] at a period subsequent to partition, the right of participation takes effect, by analogy [to the case of a son born after separation.] "When the sons have been separated, one, who is afterwards born of a woman equal in class, shares the distribution." ‡

8. The masculine gender is not here used restrictively in speaking of an outcast and the rest. It must be therefore understood, that the wife, the daughter, the mother, or any other female, being disqualified for any of the defects which have been specified, is likewise excluded from participation.

9. The disinherison of the persons above described seeming to imply disinherison of their sons, the author adds: "But their sons, whether legitimate, or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects." ||

10. The sons of these persons, whether they be legitimate offspring or issue of the wife, are entitled to allotments, or are rightful partakers of shares; provided they

#### ANNOTATIONS.

5. "*A wise man should give all of them food and raiment.*" ] Other authorities (as DEVALA and BAUD'HAYANA) except the outcast and his offspring. That exception not being here made, it is to be inferred, that one, whose offence may be expiated and who is disposed to perform the enjoined penance, should be maintained; not one whose crime is inexpiable. BALAM-BHATTA.

6. *If their disqualification arose before the division of the property.* The disqualification of the outcast and the rest who are not excluded for natural defects. BALAM-BHATTA.

\* MENU, 9. 202.

† BALAM-BHATTA.

‡ YAJNYAWALKYA, 2. 123. Vide supra, C. 1. Sect. 6 § 1.

|| YAJNYAWALKYA 2. 142.

be faultless or free from defects which should bar their participation, such as impotency and the like.

11. Of these [two descriptions of offspring\*] the impotent man may have that termed issue of the wife; the rest may have legitimate progeny likewise. The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the adoption of other sons.

12. The author delivers a special rule concerning the daughters of disqualified persons: "Their daughters must be maintained likewise, until they are provided with husbands."†

13. Their daughters, or the female children of such persons, must be supported, until they be disposed of in marriage. Under the suggestion of the word "likewise," the expenses of their nuptials must be also defrayed.

14. The author adds a distinct maxim respecting the wives of disqualified persons: "Their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled: and so indeed should those, who are perverse."‡

15. The wives of these persons, being destitute of male issue, and being correct in their conduct, or behaving virtuously, must be supported or maintained. But, if unchaste they must be expelled; and so may those, who are perverse. These last may indeed be expelled: but they must be supported, provided they be not unchaste. For a maintenance must not be refused solely on account of perverseness.

## SECTION XI.

### *On the separate property of a woman.*

1. After briefly propounding the division of wealth left by the husband and wife, ("Let sons divide equally both the effects and debts, after the demise of their two parents" ||) the partition of a man's goods has been described at large. The author, now intending to explain fully the distribution of a woman's property, begins by

\* BALAM-BHATTA. †

YAJNYAWALKYA 2. 142.

† YAJNYAWALKYA, 2. 143.

|| YAJNYAWALKYA, 2. 118. Vide supra. C. 1. Sect. 3. § 1.

setting forth the nature of it: "What was given to a woman by the father, the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other separate acquisition, is denominated a woman's property."\*

2. That, which was given by the father, by the mother, by the husband, or by a brother; and that, which was presented (to the bride) by the maternal uncles and rest (as paternal uncles, maternal aunts, &c.†) at the time of the wedding, before the nuptial fire; and a gift on a second marriage, or gratuity on account of supersession, as will be subsequently explained, ("To a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supersession." § 34,) and also property which she may have acquired by inheritance, purchase, partition, seizure or finding,‡ are denominated by MENU and the rest 'woman's property.'

3. The term (woman's property) conforms, in its import, with its etymology, and is not technical: for, if

#### ANNOTATIONS.

1. *As also any other separate acquisition.*] In JIMUTA-VAHANA'S quotation of the text, (C. 4. Sect. 1. § 13.) the conjunctive and pleonastic particles *chaira* (*cha-eva*) are here substituted for the suppletory term *adya*. That reading is censured by BALAM-BHATTA.

2. *Before the nuptial fire.*] Near it. *Subod'hini*.

*On account of supersession.*] Supersession is the contracting of a second marriage through the influence of passion, while a first wife lives, who was married to fulfil religious obligations. *Subod'hini*.

*Property which she may have acquired by inheritance.*] The commentator BALAM-BHATTA, defends his author against the writers of the eastern school (JIMUTA-VAHANA, &c.) on this point. Wealth, devolving on a woman by inheritance, is not classed by the authorities of that school with 'woman's property.' See JIMUTA-VAHANA, C. 4. and C. 11. Sect. 1. § 8.

3. *The term 'woman's property' is not technical.*] This is contrary to the doctrine of JIMUTA-VAHANA, C. 4.

\* YAJNYAWALKYA, 2. 144.

† BALAM-BHATTA.

‡ Vide C. 1. Sect. 1. § 8.

the literal sense be admissible, a technical acceptance is improper.

4. The enumeration of six sorts of woman's property by MENU ("What was given before the nuptial fire, what was presented in the bridal procession, what has been bestowed in token of affection or respect, and what has been received by her from her brother, her mother, or her father, are denominated the six-fold property of a woman ;"\*) is intended, not as a restriction of a greater number, but as a denial of a less.

5. Definitions of presents given before the nuptial fire and so forth have been delivered by CATYAYANA : "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as woman's property bestowed before the nuptial fire. That, again, which a woman receives while she is conducted from her father's house (to her husband's dwelling,) is instanced as the property of a woman, under the name of gift presented in the bridal procession. Whatever has been given to her through affection by her mother-in-law or by her father-in-law, or has been offered to her as a token of respect, is denominated an affectionate present. That

#### ANNOTATIONS.

4. "*Bestowed in token of affection or respect.*" ] This passage is read differently in the *Retnacara* and by JIMUTA-VAHANA (C. 4. Sect. 1. § 4). It is here translated conformably with BALAMBHATTA's interpretation, grounded on the subsequent text of CATYAYANA (§ 5); where two reasons of an affectionate gift are stated : one, simple affection ; the other, respect shown by an obeisance at the woman's feet.

5. "*From her father's house.*" ] The *Retnacara* and *Chintamani* read "from the parental abode." See JIMUTA-VAHANA, C. 4. Sect. 1. § 6.

"*Offered to her as a token of respect.*" ] Given to her at the time of making an obeisance at her feet. *Smṛiti-chandrica*.

"*Denominated an affectionate present.*" ] This reading is followed in the *Smṛiti-chandrica*, *Viramitrodaya*, &c. But the *Retnacara*, *Chintamani*, and *Vivada-chandra* read 'denominated an acquisition through loveliness ;' *lavanyarjitam* instead of *priti-dattum*.



which is received by a married woman or by a maiden, in the house of her husband or of her father, from her brother or from her parents, is termed a kind gift."

6. Besides (the author says) "That which has been given to her by her kindred; as well as her fee or gratuity, or anything bestowed after marriage."\* What is given to a damsel by her kindred; by the relations of her mother, or those of her father. The gratuity, for the receipt of which a girl is given in marriage. What is bestowed or given after marriage, or subsequently to the nuptials.

7. It is said by CATYAYANA, "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent; and so is that, which is similarly received from the family of her father." It is celebrated as woman's property: for this passage is connected with that which had gone before. (§ 5.)

8. A woman's property has been thus described. The author next propounds the distribution of it: "Her kinsmen take it, if she die without issue."†

9. If a woman die "without issue;" that is, leaving no progeny; in other words, having no daughter nor

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#### ANNOTATIONS.

"From her brother or from her parents." ] The *Culpataru* reads "from her husband." See JIMUTA-VAHANA, C. 4. Sect. 2. § 21.

"Termed a kind gift." ] So the commentary of BALAM-BHATTA explains, *saudayica*, as bearing the same sense with its etymon *sudaya*. He censures the interpretation which JIMUTA-VAHANA has given. (C. 4. Sect. 1. § 22.)

6. The gratuity, for the receipt of which a girl is given in marriage.] This relates to a marriage in the form termed *Asura* or the like. BALAM-BHATTA.

7. "Similarly received from the family of her father."] The *Retnacara* reads 'from her own family;' JIMUTA-VAHANA, 'from the family of her kindred.' See JIMUTA-VAHANA, C. 4. Sect. 1. § 2.

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\* YAJÑYAWALKYA, 2. 145.

† YAJÑYAWALKYA, 2. 145.

daughter's daughter nor daughter's son, nor son, nor son's son ; the woman's property, as above described, shall be taken by her kinsmen ; namely her husband and the rest, as will be (forthwith \*) explained.

10. The kinsmen have been declared generally to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of the marriage ceremonies. "The property of a childless woman, married in the form denominated *Brahma*, or in any of the four (unblamed modes of marriage,) goes to her husband : but, if she leave progeny, it will go to her (daughter's) daughters : and, in other forms of marriage (as the *A'sura*, &c.) it goes to her father (and mother, on failure of her own issue." †)

11. Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated *Brahma*, *Daiva*, *Arsha* and *Prajapatya*, the (whole ‡) property, as before described, belongs in the first place to her husband. On failure of him, it goes to his nearest kinsmen (*sapindas*) allied by funeral oblations. But, in the other forms of marriage called *A'sura*, *Gandharba*, *Racshasa* and *Paisacha* ; the property of a childless woman goes to her parents, that is, to her father and mother. The succession devolves first (and the reason has been before explained, ||) on the mother, who is virtually exhibited (first) in the elliptical *pitrigami* implying 'goes (*guch'hati*) to both parents (*pitarau* ; ) that is, to the mother, and to the father.' On failure of them, their next of kin take the succession.

12. In all forms of marriage, if the woman "leave progeny ;" that is, if she have issue ; her property devolves on her daughters. In this place, by the term

#### ANNOTATIONS.

11. *Dying without issue as before stated.*] Without any of the five descendants abovementioned (§ 9.) BALAM-BHATTA.

12. *In all forms of marriage.*] Several variations in the reading of this passage are noticed by BALAM-BHATTA : as *sarveshu api*, or *sarveshu eva*, or *sarveshu*. There is only a shade of difference in the interpretation.

\* BALAM-BHATTA,  
† BALAM-BHATTA.

† YAJNYAWALCYA, 2. 146.  
|| Sect. 3.

"daughters," grand-daughters are signified ; for the immediate female descendants are expressly mentioned in a preceding passage : "the daughters share the residue of their mother's property, after payment of her debts." \*

13. Hence, if the mother be dead, daughters take her property in the first instance : and here, in the case of competition between married and maiden daughters, the unmarried take the succession ; but, on failure of them, the married daughter : and here again, in the case of competition between such as are provided and those who are endowed, the unendowed take the succession first ; but, on failure of them, those who are endowed. Thus GAUTAMA says "A woman's property goes to her daughters unmarried, or unprovided," † 'or provided,' as is implied by the conjunctive particle in the text. "Unprovided" are such as are destitute of wealth or without issue.

14. But this (rule, for the daughter's succession to the mother's goods, ‡) is exclusive of the fee or gratuity. For that goes to brothers of the whole blood, conformably with the text of GAUTAMA : "The sister's fee belongs to the uterine brothers : after (the death of) the mother." § ||

15. On failure of all daughters, the grand-daughters in the female line take the succession under this text : "if she leave progeny, it goes to her [daughter's] daughters." ¶ |

16. If there be a multitude of these [grand-daughters \*\*] children of different mothers, and unequal in

#### ANNOTATIONS.

14. "*After the death of the mother.*" ] This version is according to the interpretation given in the *Subod'hini* : which agrees with that of the scholiast of GAUTAMA, the *Culpataru* and other authorities. But the text is read and explained differently by JINUTAVAHANA (C. 4. Sect. 3. § 27).

BALAM-BHATTIA understands by the term 'mother,' in this place, the woman herself, or in short the sister, after whose death her fee or nuptial gratuity goes to her brothers.

16. *Children of different mothers, and unequal in number.* ] Where

\* YAJNYAWALKYA, 2. 118. Vide supra. C. 1. Sect. 3. § 8.

† GAUTAMA, 28. 22. Vide supra. C. 1. Sect. 3. § 11.

‡ BALAM-BHATTIA. || GAUTAMA, 28. 23. ¶ Vide § 10. & 12.

\*\* BALAM-BHATTIA.

number, shares should be allotted to them through their mothers, as directed by GAUTAMA: "Or the partition may be according to the mothers: and a particular distribution may be made in the respective sets."\*

17. But if there be daughters as well as daughter's daughters, a trifle only is to be given to the grand-daughters. So MENU declares: "Even to the daughters of those daughters, something should be given, as may be fit, from the assets of their maternal grandmother, on the score of natural affection."†

18. On failure also of daughters, the daughter's sons are entitled to the succession. Thus NAREDA says "Let daughters divide their mother's wealth; or, on failure of daughters, their male issue."‡ For the pronoun refers to the contiguous term "daughters."

19. If there be no grandsons in the female line, sons take the property: for it has been already declared "the [male] issue succeeds in their default."|| MENU likewise shows the right of sons, as well as of daughters

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the daughters were numerous, but are not living; and their female children are unequal in number, one having left a single daughter; another, two; and a third, three; how shall the maternal grandmother's property be distributed among her grand-daughters. Having put this question, the author reminds the readers of the mode of distribution of a paternal grandfather's estate among his grandsons. (C. 1. Sect. 5.) *Subod'hini*.

18. "*Their male issue.*" Several variations in the reading of the last term are noticed in the commentary of BALAM-BHATTA; making the term either singular or plural, and putting it in the first or in the seventh case. He deduces, however, the same meaning from these different readings.

*The pronoun refers to the contiguous term.*] JIMUTA-VAHANA, citing this passage for the succession of sons rather than of grandsons, seems to have understood the pronoun as referring to the remoter word 'mother.' See JIMUTA-VAHANA. C. 4. Sect. 2. § 13.

\* GAUTAMA, 28. 15. † MENU, 9. 193. ‡ NAREDA. 13. 1  
|| YAJNYAWALCYA, 2. 118. Vide supra. C. 1. Sect. 3. § 12.

to their mother's effect: "When the mother is dead let all the uterine brothers and the uterine sisters equally divide the maternal estate."\*

20. 'All the uterine brothers should divide the maternal estate equally: and so should sisters by the same mothers.' Such is the construction: and the meaning is, not that 'brothers and sisters share together;' for reciprocation is not indicated, since the abridged form of the conjunctive compound has not been employed: but the conjunctive particle (*cha*) is here very properly used with reference to the person making the partition; as in the example, DEVADATTA practises agriculture, and so does YAJNYADATTA.

21. "Equally" is specified (§ 19) to forbid the allotment of deductions [to the eldest and so forth]. The whole blood is mentioned to exclude the half blood.

22. But, though springing from a different mother, the daughter of a rival wife, being superior by class, shall take the property of a childless woman who belongs to an inferior tribe. Or, on failure of the step-daughter, her issue shall succeed. So MENU declares: "The wealth of a woman, which has been in any manner given to her by her father, let the *Brahmani* damsel take; or let it belong to her offspring."†

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19. "*Let all the uterine brothers ..... equally divide.*" In the *Calpataru* the text is read "let all the sons by the same mother divide;" *sarve putrah sahodarah* instead of *saman sarve sahodarah*.

20. *Since the abridged form of the conjunctive compound has not been employed.*] Nouns coalesce and form a single word denominated *dvandwa* or conjunctive compound, when the sense of the conjunctive particle (*cha* 'and') is denoted. PANINI, 2. 2. 29. Vide supra. Sect. 3. § 2.

The import of the particle, here intended, is either *reciprocation* (*itarêlara*) explained to 'be the union, in regard to a single matter, of things specifically different, but mutually related, and mixed or associated, though contrasted;' or it is *cumulation* (*samahara*) explained as the 'union of such things, in which contrast is not marked.' The other senses of the conjunctive particle are *assemblage* (*samuch-*

\* MENU, 9. 192.

† MENU, 9. 198.

23. The mention of a *Brahmani* includes any superior class. Hence the daughter of a *Cshatriya* wife takes the goods of a childless *Vaisya*: (and the daughter of a *Brahmani*, *Cshatriya* or *Vaisya* inherits the property of a *Sudra*.\*)

24. On failure of sons, grandsons inherit their paternal grandmother's wealth. For GAUTAMA says: "They, who share the inheritance, must pay the debts:"† and the grand-

### ANNOTATIONS.

*chaya*) or 'the gathering together of two or more things independent of each other, but assembled in idea with reference to some common action or circumstance:' and *superaddition* (*anvāchaya*) or 'the connection of a secondary and unessential object with a primary and principal one, through a separate action or circumstance consequent to it.' In the two last senses of the conjunctive particle, there is not such a connection of the terms as authorizes their coalition to form a compound term. CAIYATA, *Padamanjari*, &c.

If *reciprocation*, as above explained, were meant to be indicated in the text of MENU (§ 19), the word *bhratri* "brother" would have been used, inflected however in the dual number to denote 'brother and sister' (PANINI, 1. 2. 68.) or else 'children,' or some generic term, would have been employed in the plural (PANINI, 1. 2. 64). But the text is not so expressed. Consequently *reciprocation* is not indicated. *Subod'hini* and BALAM-BHATTA.

*The conjunctive particle is here very properly used.*] 'It is employed in one of the acceptations, as in the example which follows. 'D. practises agriculture, and so does Y.' 'Brothers share equally; so do sisters.'

*With reference to the person making the partition.*] 'Another reading of this passage is noticed in the commentary of BALAM-BHATTA "with the import of superaddition relatively to the person who makes the partition," *vibhāga-cartritwēn'ānwachayēn'āpi* instead of *vibhāga-cartrītw'ānwachayēn'āpi*.

23. Hence the daughter of a *Cshatriya* wife takes the goods of a childless *Vaisya*.] This inference is contested by SRICRISHNA in his commentary on the *Dayabhaga* of JIMUTA-VAHANA.

\* *Subod'hini* and BALAM-BHATTA.

† GAUTAMA, 12. 32.

sons are bound to discharge the debts of their paternal grandmother ; for the text expresses " Debts must be paid by sons and son's sons. " \*

25. On failure of grandsons also, the husband and other relatives abovementioned † are successors to the wealth.

26. On occasion of treating of woman's property, the author adds something concerning a betrothed maiden : " For detaining a damsel, after affiancing her, the offender should be fined, and should also make good the expenditure together with interest. " ‡

27. One, who has verbally given a damsel [in marriage] but retracts the gift, must be fined by the king, in proportion to [the amount of] the property or [the magnitude of] the offence ; and according to (the rank of the parties, their qualities, || and) other circumstances. This is applicable, if there be no sufficient motive for retracting the engagement. But if there be good cause, he shall not be fined, since retractation is authorized in such a case. " The damsel, though betrothed, may be withheld, if a preferable suitor present himself. " ¶

28. Whatever has been expended, on account of the espousals, by the [intended] bridegroom, (or by his father or guardian, \*\*) for the gratification of his own or of the damsel's relations, must be repaid in full, with interest, by the affiancer to the bridegroom.

29. Should a damsel, anyhow affianced, die before the completion of the marriage, what is to be done in that case ? The author replies, " If she die (after troth plighted,) let the bridegroom take back the gifts which he had presented ; paying however the charges on both sides. " ††

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24. *The grandsons are bound to discharge the debts.* ] ' Since one text declares them liable for the debts ; and the other provides, that the debts shall be paid by those who share the inheritance ; it follows that they share the heritage. *Subod'hini*, &c.

29. *Anyhow affianced.* ] By a religious rite, or by taking of hands, or in any other manner. BALAM-BHATTA.

\* YAJNYAWALCYA, 2. 50. † § 9—11. ‡ YAJNYAWALCYA, 2. 147.

|| BALAM-BHATTA.

¶ YAJNYAWALCYA, 1. 65.

\*\* BALAM-BHATTA,

†† YAJNYAWALCYA, 2. 147.

30. If a betrothed damsel die, the bridegroom shall take the rings and other presents, or the nuptial gratuity which had been previously given by him (to the bride,) "paying however the charges on both sides:" that is, clearing or discharging the expense which has been incurred both by the person who gave the damsel and by himself, he may take the residue. But her uterine brothers shall have the ornaments for the head, and other gifts, which may have been presented to the maiden by her maternal grandfather, (or her paternal uncle,\*) or other relations; as well as the property, which may have been regularly inherited by her. For BAUD'HAYANA says: "The wealth of a deceased damsel, let the uterine brethren themselves take. On failure of them, it shall belong to the mother; or, if she be dead, to the father."

31. It has been declared, that the property of a woman leaving no issue, goes to her husband. The author now shows, that, in certain circumstances, a husband is allowed to take his wife's goods in her lifetime, and although she have issue: "A husband is not liable to make good the property of his wife taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint."†

32. In a famine, for the preservation of the family, or at a time when a religious duty must indispensably be performed, or in illness, or "during restraint" or confinement in prison or under corporal penalties, the husband, being destitute of other funds and therefore taking his wife's property, is not liable to restore it. But,

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30. *Clearing or discharging.*] The common reading of the passage is *vigañya* a "accounting;" but BALAM-BHATTA rejects that reading, and substitutes *vigamya* "removing" or 'discharging.'

*He may take the residue.*] The meaning is this: after deducting from the damsel's property, the amount which has been expended by the giver or acceptor of the maid, or by their fathers or other relations on both sides in contemplation of the marriage, let the residue be delivered to the bridegroom. *Subodhini*;

32. *Is not liable to restore it.*] He is not positively required to make it good. BALAM-BHATTA.

\* BALAM-BHATTA.

† YAJNYAWALKYA, 2. 148.



if he seize it in any other manner (or under other circumstances,) he must make it good.

33. The property of a woman must not be taken in her lifetime by any other kinsman or heir but her husband: since punishment is denounced against such conduct. ("The kinsmen who take their goods in their lifetime, a virtuous king should chastise by inflicting the punishment of theft: "\*) and it is pronounced an offence. "Such ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves: they, who do so, are degraded from their tribe."†

34. A present made on her husband's marriage to another wife has been mentioned as a woman's property (§ 1). The author describes such a present: "To a woman, whose husband marries a second wife, let him give an equal sum, (as a compensation) for the supersession, provided no separate property have been bestowed on her: but, if any have been assigned, let him allot half."‡

35. She is said to be *superseded*, over whom a marriage is contracted. To a wife so superseded, as much should be given on account of the supersession as is expended (in jewels and ornaments, or the like,||) for the second marriage: provided separate property had not been previously given to her by her husband; or by her father-in-law. But, if such property had been already bestowed on her, half the sum expended on the second marriage should be given. Here the word 'half' (*arddha*) does not intend an exact moiety. So much therefore should be paid, as will make the wealth, already conferred on her, equal to the prescribed amount of compensation. Such is the meaning. *meaning*

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35. *Here the word half does not intend an exact moiety.*] The term, as it stands in the original text, is not neuter, that it should

\* NARADA, as cited by BALAM-BHATTA; but not found in his institutes.

† MENU, 9, 200, Vide supra. C. 1. Sect. 4. § 19.

‡ YAJNYAWALKYA, 2. 143.

|| BALAM-BHATTA.

## SECTION XII.

*On the Evidence of a Partition.*

1. Having thus explained partition of heritage, the author next propounds the evidence by which it may be proved in a case of doubt. "When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives and witnesses, and by written proof, or by separate possession of house or field."\*

2. If partition be denied or disputed, the fact may be known and certainty be obtained by the testimony of kinsmen, relatives of the father or of the mother, such as maternal uncles and the rest, being competent witnesses as before described; † or by the evidence of a writing, or record of the partition. It may also be ascertained by separate or unmixed house and field.

3. The practice of agriculture or other business pursued apart from the rest, and the observance of the five great sacraments ‡ and other religious duties performed separately from them, are pronounced by NAREDA to be tokens of a partition. "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by separate transaction of affairs. The religious duty

## ANNOTATIONS.

signify an equal part or exact moiety: but it is masculine and signifies portion in general. (*Amera*, 11. 2. 17.) *Subodhini*.

BALAM-BHATTA, citing a passage of the *Mahabhashya* to prove that *arddha* in the masculine signifies half; interprets the quotation from the *Amera Cosha* (11. 2. 17.) as exhibiting *arddha*, masculine and neuter, in the sense of moiety. He therefore rejects the foregoing explanation, and considers the word 'half' as employed in the text for an indefinite sense.

2. "By the testimony of kinsmen."] Or rather strangers belonging to the same tribe with the parties. BALAM-BHATTA.

3. "By the record of the distribution."] Another reading is noticed by BALAM-BHATTA: "by occupancy or by a writing;" *bhogalechyena* instead of *bhagalechyena*. See JIMUTA-VAHANA, C. 14. § 1.

\* YAJNYAWALKYA, 2. 150.

† In the preceding book on Evidence.

‡ MENU, 369.

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of unseparated brethren is single. When partition indeed has been made, religious duties become separate for each of them."\*

4. Other signs of previous separation are specified by the same author: "Separated and unseparated brethren may reciprocally bear testimony, become sureties, bestow gifts, and accept presents."†

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\* NAREDA, 13.—36-37.

† NAREDA, 13. 39.



# A D D E N D A.

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## A SYNOPSIS OR GENERAL SUMMARY

OF THE

## HINDU LAW ACCORDING TO THE MITACSHARA.

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THE Hindu Law of Inheritance, according to the *Mitacshara*, may be classified under the following heads :—

*First.*—Heritage (Daya) or that wealth which becomes the property of another solely by reason of relation to the owner. (Ch. I, Sec. 1, v. 2.)

*Second.*—The time when, and the manner in which, this wealth becomes the property of another.

*Third.*—Who these persons are to whom such wealth goes, their rights and shares, and the order in which they take such rights and shares.

### *Right of Property.*

1. Definition and division of heritage (Daya) (Ch. I, Sec. 1, v. 2, 3.) Definition of partition; paternal estate and son. (Ib. v. 4, 5.)

2. Disquisition on property; mode of acquisition. (Ib. v. 7 to 11.)

3. Ownership is by inheritance, purchase, partition, seizure or finding. (Ib. v. 12, 13.)

4. Property in the paternal or ancestral estate is by birth, (Ch. I, Sec. 1, v. 27), and not by demise of the last owner. (See Ib. v. 22, 23.)

5. Exception in case if the father be alive and separate from the grandfather, or if he have no other brothers. (Ch. I, Sec. 5, v. 3.)

6. Not so in case of a nephew. His right is by the owner's demise. (Ch. II, Sec. 4, v. 7, and note.)

7. The father has an absolute right over moveables. (Ib. v. 21.) But not over immoveable property or bipeds. (Ib. v. 27.)

8. In ancestral property the right of father and son is equal (Ch. I, Sec. 5, v. 1, 3, 5.) The son can compel a partition against the father's will, and prevent a sale or gift thereof being made by the father. (Ch. I, Sec. 5, v. 7, 8, 9.) But not so in property acquired or recovered by the father (Ch. I, Sec. 5, v. 9, 10, 11.) But he has no right to portion allotted to the parents or property acquired by the father after partition, if afterwards there be a son born. (Ch. I, Sec. 6, v. 1, 2, 4, 5, 6.) But not so in case of re-union. (Ch. I, Sec. 6, v. 7.)

9. Sale of immoveables is forbidden, except under certain circumstances. (Ib. v. 27, 28, 29.)

10. Consent of unseparated kinsmen is necessary to pass land by gift, sale, or mortgage. (Ib. v. 30.) Formalities necessary to pass land. (Ib. v. 30, 31.)

11. The rights of father and son are equal in ancestral property, but the allotment of shares amongst grandsons by different fathers is according to the fathers. (Ch. I, Sec. 5, v. 1, 2, 6.) A grandson can compel partition of the grandfather's property although the father be unwilling. (Ch. I, Sec. 5 v. 5, 11.) He has also a right of prohibition to a donation or sale of effects inherited from the grandfather. But not so in effects acquired or recovered by the father. (Ch. I, Sec. 5, v. 9, 10, 11.)

### *Effects not liable to partition.*

1. "Whatever has been acquired by the co-parcener himself without detriment to the father's estate, as a present from a friend, or gift at nuptials. (Ch. I, Sec. 4, v. 1, 2, 10.)

2. Hereditary property which had been taken away, but recovered by the exertions of some of the co-parcener,\* and without detriment to the father's estate. (Ch. I, Sec. 4, v. 1, 2, 6.) Except in case of land, when the person who recovers, takes one-fourth, and the remainder is equally shared by all the brethren. (Ch. I, Sec. 4, v. 3.)

3. What has been acquired by science † without detriment to the father's estate. (Ch. I, Sec. 4, vs. 1, 2, 5, 6, 10.)

\* See Bissessur Chuckerbutty vs. Seetul Chunder Chuckerbutty: 9 W. R., p. 69; 6 Wym., p. 201. *Appendix*, p. 84, case 15.

† See Chalakonda Alasani vs. Chalakonda Ratnachalam. 2 Stokes, p. 66; *Appendix*, p. 76, case 9.

4. Clothes which have been worn and ornaments worn by the father as well as his vehicles. (Ch. I, Sec. 4, v. 17.) Also the horses and the like, if they cannot be divided. Also a single goat or sheep or beast with uncloven hoofs, for they belong to the eldest brother. (Ch. I, Sec. 4, v. 18.)

5. The ornaments worn by each person are his. (Ch. I, Sec. 4, v. 19.)

6. Prepared food, &c. (Ch. I, Sec. 4, v. 20.)

7. Water or reservoir of water ; female slaves ; the common way or road of ingress and egress. (Ch. I, Sec. 4, v. 21, 25.)

8. Special Rule. Effects not liable to partition between sons by a Brahmani woman and those by women of inferior tribes. "Land obtained by acceptance of donation must not be given to the son of a Cshatriya or other wife of inferior tribe." (Ib. v. 26.)

9. Whatever is acquired through the father's favor. (Ch. I, Sec. 4, v. 28 ; Sec. 6, v. 13 to 16.)

10. In case of acquisition at the charge of the patrimony, the acquirer gets a double share. (Ch. I, Sec. 4, v. 29.) But not so in case of improvement only. (Ib. v. 30, 31.)

### *Hermit's property.*

A hermit may have property. His hoard for a day, a month, or a year ; an ascetic has his clothes, his books and other requisite articles ; and a professed student may have clothes and other effects. (Ch. II, Sec. 10, v. 8.)

### *Stridhuna or the separate property of a woman.*

1. The definition of Yajnyawalkya of Stridhuna is "what was given to a woman by the father, the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife \* as also any other separate acquisition," is Stridhuna. (Ch. II, Sec. 11. v. 1 to 6.) Separate acquisition is explained as acquisition by inheritance, † purchase, partition, seizure, or finding, (Ib. v. 2.)

\* See Ch. II, Sec. 11, v. 34, 35.

† See *Punchanon Ojah vs. Salshun Misser*, 3 W. R., p. 140 ; Appendix p. 95, Case 6. *Sengamala Thammal vs. Valaynda Mudali*, 3 M. H. C. Rep. O'Sullivan and Mills, 312, Appendix, p. 96, Case 7. *Bhugwandeon Dobey vs. Myna Ball*. 9. W. R. Privy Council Rulings, Appendix, p. 96, Case 11.

2. Menu's enumeration of *Stridhuna*, or sixfold property of women. (Ch. II. Sec. 11, v. 4.)

3. Catyayana's definition of presents given to women before and after marriage, either as an affectionate gift or as a token of respect. (Ch. II, Sec. 11, v. 5, 6, 7.) These are woman's separate property. (Ib. v. 7.)

*Time when partition may take place.*

1. At the pleasure of the father (Ch. I, Sec. 2, vs. 1, 2, 3, 7.) But he has no power to make a distribution otherwise than ordained by law. (Ib. v. 13, 14\*)

2. When the father is indifferent to wealth, and the mother is incapable of bearing more sons, a partition is admissible at the option of the sons against their father's wish. (Ch. I, Sec. 2, v. 7.)

3. When the father is old, disturbed in intellect, disqualified by vicious habits, or diseased, although the mother be capable of bearing issue. (Ib., note) Although the father retains his worldly affection, a partition can take place of the grandfather's estate by the will of the son. (Ch. I, Sec. 5, v. 8.)

4. The decease of the father. (Ib. and note, and Ch. I, Sec. 3.) After waiting for the delivery of the mother, or of such of the women as are pregnant, when such pregnancy was manifest. (Ch. I, Sec. 6, v. 12.)

*Shares of sons and wives when partition takes place at the desire of the father.*

1. When the partition takes place at the desire of the father, it may be equal (Ch. I, Sec. 2, v. 1,) or "he may separate the eldest with the best share, the middlemost with a middle share, and the youngest with the worst share" (Ch. I, Sec. 2, v. 3.) The rule of Menu is, that when the property is self-acquired the portion to be deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that; for the youngest, quarter of that. (Ch. I, Sec. 2, v. 3, 4, 6.)

2. When the partition is equal, the wives to whom no separate property has been given must be rendered partakers of like portions. (Ib. v. 8.) But if separate property

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\* This relates to property acquired by the father himself. (Ch. I Sec. 5, v. 7)

have been given, half a share is to be allotted to her. (Ib.) In case of unequal partition, they are to receive equal shares of the aggregate, besides the furniture in the house and the ornaments. (Ib., v. 10.)

3. Separation of a son who can support himself, and is not desirous of participation, may be completed by giving him a "trifle," so that his sons or other heirs may have no future claim. (Ib., v. 11, 12.)

4. The father can keep a double share for himself (Ch. I, Sec. 5, v. 7.) This relates to property acquired by himself. (Ch. I, Sec. 5, v. 7.)

*When partition takes place after the demise of the parents.*

1. The shares of the sons are equal. (Ch. I, Sec. 3, vs. 1 4, 6, 7.)

2. Except in the separate property of their mother in case there be daughters, "Let daughters share the residue of their mother's property, after payment of her debts." (Ib. v. 8.) But on failure of daughters, the sons divide both her debts and effects equally. (Ib., v. 12, 13.)

3. The widow takes an equal share, (Ch. I, Sec. 7, v. 1, 2.)

4. The uninitiated brother is to be initiated at the charge of the whole estate. (Ch. I, Sec. 7, v. 3, 4.)

5. Unmarried sisters are to be disposed of in marriage, by giving them as an allotment, a fourth part of a brother's share. (Ch. I Sec. 7, v. 5, 6, 7, 8, 9, 10, 11, 12, 13.) Thus an unmarried daughter participates in the inheritance after her father's death. (Ib., v. 14.)

6. The shares of sons by wives of different tribes are four, three, two and one; that is, the sons of Brahmana by Brahmani wife get four shares a-piece; those by a Cshatriya wife, three shares a-piece; those by a Vaisya wife, two shares a-piece; and those by a Sudra wife one share a-piece. So a son of Cshatriya by a Cshatriya wife three shares a-piece; those by a Vaisya wife two shares a-piece, the sons of a Sudra, one share a-piece, and so on, a person of one tribe not being allowed to marry higher than his own. (Ch. I, Sec. 8, v. 1, 2, 3, 4, 5, 6, 7.)

7. But not so in case of land acquired by acceptance of gift. (Ch. I, Sec. 8, v. 8.) The son of a Sudra wife by a man of the regenerate tribe gets no land, however acquired.



8. Effects which have been withheld by one co-heir from another, and which are discovered after separation, are to be divided equally, (Ch. I, Sec. 9, v. 1, 2, 3.) and not to be taken exclusively by him who discovers. (Ib. v. 3.)

*Right of a son born after partition.*

1. A son born after separation had taken place during the lifetime of the father, of a wife equal in class gets the portion which had been allotted to the father, as also to that of his mother, if there be no daughter. (Ch. I, Sec. 6, v. 1, 2, 4.) But he shares with such of the brethren as have re-united with the father. (Ch. I, Sec. 6, v. 7.)

2. But a son by a woman of a different tribe receives his own proper share, with the whole of the mother's property, if there be no daughters. (Ch. I, Sec. 6, v. 3.) Except gifts affectionately bestowed by either of the parents after separation. (Ch. I, Sec. 6, v. 13, 14.)

3. A posthumous son born after partition had taken place amongst the brethren gets a share equal with others of the same class. (Ch. I, Sec. 6, vs. 8, 9, 10, and note.) The share is to be raised by including in the several shares, and the income thence arisen after subtracting the father's debts, a small part is to be taken from the remainder of the shares respectively, and an allotment equal to the portion of the other brothers should be thus formed. (Ib. v. 10.) Except ornaments or other presents which has been affectionately bestowed by father or mother on any one of the children before separation took place. (Ch. I, Sec. 6, v. 13, 14, 15, 16.)

4. If a son be born to a brother's widow after partition had taken place amongst the undivided brethren, the son so born shall likewise take his share. (Ch. I, Sec. 6, v. 11.) So in case of reunion (Ch. II, Sec. 9, v. 1, 4, 6.) Reunion can take place only with a father, a brother, or a paternal uncle. (Ch. II, Sec. 9, v. 3.)

*Of the persons who take the property of another and their shares.*

*Sons, principal and secondary.*

1. The legitimate son or one born of a legal wife, of equal tribe. (Ch. I, Sec. 11, v. 1, 2.)

2. Son of an appointed daughter, the appointed daughter is considered to be of the third description of

sons. (Ch. I, Sec. 11, v. 1, 3.) *Putrica Putra* is of four descriptions (See note 3, verse of *Hemadri*, pp. 64-65) *Gautama* puts the son of an appointed daughter as the tenth in rank. But it relates to one differing in tribe. (Ch. I, Sec. 11, v. 35.)

3. The son of the wife, or one begotten on the wife by a kinsman of her husband. He is a *Dwyamushayana*, or son of two fathers by special compact. (Ch. I, Sec. 10, v. 1, 2, 3.) Otherwise he is the son of the husband, and not of his natural father. (Ib. v. 4, 5, 6 ; Ch. I, Sec. 11, v. 1.) He is inferior to the legitimate son, and is a wife's son or *Cshetraja*. (Ch. I, Sec. 11, v. 4, 5.)

4. A son of hidden origin, or one secretly produced in the house. (Gud'haja) (Ch. I, Sec. 11, v. 6, 39.)

5. A damsel's son, or child of an unmarried woman (by one of like class) ; he is considered as the son of the maternal grandsire, but, if married, he is considered as the son of the husband. (Ch. I, Sec. 11, v. 1, 7, 39.)

6. The son of a twice married woman by one of like class. (Ch. I, Sec. 11, v. 1, 8, 39.)

7. The adopted son, *Dattuca* or given by his parents. (Ch. I, Sec. 11, vs. 1, 9.) Two sorts : *first*, simple ; and *second*, son of two fathers ; *Dwyamushayana*. *Vyavahara Mayuc'ha*. See Note, p. 71.)

8. A son bought (*crita*) is one whom a man, for the sake of having issue, purchases from his father and mother. (Ch. I, Sec. 11, v. 1, 16.)

9. A son made, or one adopted by the man himself (*critrima*). (Ch. I, Sec. 11, v. 1, 17.)

10. Self-given son. (Ch. I, Sec. 11, v. 1, 18.)

11. Child accepted while yet in the womb by one of equal class. (Ch. I, Sec. 11, v. 1, 19, 39.)

12. The deserted son, or one adopted who had been forsaken by his parents (*Apavidd'ha*). (Ch. I, Sec. 11, v. 1, 20.)

13. The rule of Menu as to which of these sons are heirs and kinsmen, and those who are not heirs but kinsmen. (Ch. I, Sec. 11, v. 30, 31, 32.)

#### *Shares of sons principal and secondary.*

1. If a legitimate son be born after the appointment of a daughter as *Putrica Putra*, he takes an equal share with the daughter. (Ch. I, Sec. 11, v. 23.)

2. But in case of a legitimate son being born after adoption, or during the existence of other inferior sons, the

adopted or other inferior sons share a fourth part of the heritage if he be of the same tribe, that is, a son of the wife, a son adopted, bought, made, self-given, and deserted, but if he be of a different tribe, that is, the damsel's son, the son of concealed origin, the son of a pregnant bride, and the son of a twice-married woman, he is entitled to food and raiment only. (Ch I Sec 11, v. 24, 25, 26, 28. Special Rule, of Menu, v 29)

3 But if there be no legitimate son or other preferable heir, even the child of an unmarried woman and the rest of the adoptive sons may succeed to the paternal estate (Ch I, Sec 11, v 21, 27, 33)

4 The son of a *Sudra* wife does not take the whole estate, even on failure of other issue. He takes a tenth part (Chap I, Sec 11, v 41, 42)

5 The son of a *Cshatriya* or *Vaisya* wife takes the whole of the property on failure of issue by women of equal class (Chap I, Sec 11, v 43)

6 The son of a female slave partakes of a share of a *Sudra's* goods according to the father's choice, but on his demise he is entitled to half-share (Ch I, Sec 12, v. 1, 21)

7 The son of a regentate tribe by a female slave does not obtain a share even by the father's choice, nor the whole estate after his demise. He is entitled only to maintenance. (Ch I, Sec 12, v 3)

#### *The widow*

1. On failure of sons principal and secondary, as mentioned in Chap I, Sec 11, as well as of grandsons, the widow (lawfully wedded wife *patni*), succeeds to the estate left by her husband (Ch II, Sec 1, vs 2, 3) "The widow of a childless man keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire estate (Ch. II, Sec 1, vs 6) Provided the husband died separated from his co-heirs, and not subsequently reunited. (Ib, v 39; Chap. II, Sec 9, v 1, 5, 6)\* The eldest wife being eldest by good qualities may take the whole of her husband's estate and maintain his other wives (Ib v 38)†

\* *Quere*—In case of a person dying unseparated from his father, mother, and brethren, and possessed of separate property, who should be his heir—his father or his mother, and in case of a person dying unseparated from his mother or brethren, whether the mother or brothers of the whole blood would take first \*

† See *Musst Indubunseo Koonwar vs. Gubbhun Koonwar* 3 B. L. R., A. O., p 289.

*The daughter.*

1. On failure of the widow, the daughters inherit. (Ch. II, Sec. 1, v. 2 ; Sec. 2, v. 1.) The participation is equal or unequal according as they are alike or dissimilar by class. (Ch. I, Sec. 2, v. 1.)

(1.) The unmarried daughter. (Ch. II, Sec. 2, v. 2, 3.,

(2.) The married daughter (Ch. II, Sec. 2, v. 3.)

2. If the competition be between unprovided and enriched daughter, the unprovided one takes the inheritance ; on failure of her, the enriched daughter. (Ch. II, Sec. 2, v. 4.) But if there be an appointed daughter, neither married nor the unmarried daughter succeeds. (Ch. I, Sec. 2, v. 5.)

*Quere.*—When the competition is between an unmarried but enriched daughter, and a married but unprovided daughter ?

*Daughter's sons.*

1. On failure of daughter, the daughter's son succeeds to the estate. (Ch. II, Sec. 2, v. 6., The grandsons take *per capita* and not *per stirpes*. See *Ram Suruth vs. Baboo Basdeo*. (2. H. C., N. W. P., Rep., p. 168 ; Appendix, p. 51, case 33.)

*The parents.*

1. The mother. (Ch. II., Sec. 3, vs. 1, 2, 3, 4.) The stepmother cannot take by inheritance from her stepson.\*

2. The father. (Ch. II., Sec. 3, v. 1, 5.)

*Brethren and their sons.*

1. On failure of father, the brethren share the estate. (Ch. II., Sec. 4, v. 1.)

2. The brother of the whole blood. (Ch. II., Sec. 4, v. 5.) But in case of reunion or if a brother dies unseparated they take before the widow. (Chap. II., Sec. 9, vs. 1, 2, 4, 5, 6. Chap. II., Sec. 1, v. 39.)

3. On failure of uterine brother, those by different mothers inherit the estate.† (Ch. 2, Sec. 4, v. 6.)

\* *Quere.*—Do all the step brothers born of stepmothers of different tribes succeed together, or do they take according to the rank of the superior or inferior class of their mothers ?

† *Lalla Johsee Lall vs. Deo Baneekoonwar*. *Sevestre Con. Mar.*, p. 439. Full Bench Ruling in S. N. W. R., p. 173 ; Appendix, p. 53, case 46.

4. In case of reunion, or if a half-brother dies unseparated, they take before the widow. (Ch. II., Sec. 1, vs. 39 ; Ch. II., Sec. 9, v. 1, 2, 4, 5, 6, 7, 8.) But if there be a uterine brother not reunited, and a half brother who is reunited, all the brethren take equally. Ch. II., Sec. 9, v. 10, 11, 12, 13.)

5. The uterine sisters also participate. (Ch. 2, Sec. 9 v. 12, 13.)

6. Some authorities include *sisters, brethren* meaning *brothers* and *sisters*. See note Ch. II., Sec. 4, v. 1 ; See Venayek Anundrow *vs.* Luxamee Bai, 9 M. I. A., p. 5, 16, case No. 56, appendix, p. 54, and other cases therein noted.)

7. On failure of brethren their sons succeed in the order of their respective fathers as brother of the whole or half-blood. Ch. II., Sec. 4, v. 7.) But in case of competition between brothers and nephews, the brothers, although half-brothers take the inheritance, though there be nephews of the whole blood (Ch. II., Sec. 4, v. 7, 8, and note.) They take *per capita*, and not *per stirpes*. In case there be a competition between a separated brother and an unseparated nephew, the nephew takes in presence to the brother. See Kesabram Mohaputher *vs.* Nandkishor Mohaputher. 3 B. L. R., A. C., p. 7.

### *Stridhuna.*

The succession to the separate property of a woman is regulated by the mode of her marriage. (Ch. II, Sec. 11, v. 10, 11.)\*

1. In all the forms of marriage, the property first devolves on her daughters. (Ch. II, Sec. 11, v. 12 ; Ch. I, Sec. 3, v. 8, 9, 10.)

2. Rule of Gautama. When the competition is between a married and an unmarried daughter, the property goes to the unmarried daughter. When the competition is between two married daughters, one endowed and another unendowed, the property goes to the unendowed daughter. (Ch. 1, Sec. 3, v. 11.) This distinction is also laid down in Ch. II, Sec. 2, vs. 3, 4.

3. *First*, unmarried daughter ; *Second*, unprovided daughter, that is, destitute of wealth or issue ; *Third* married endowed daughter. (Chap. II, Sec. 11, v. 13.)

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\* As in Kali Yoga, only the four unblamed modes of marriage—viz. *Brahma*, *Daiva*, *Arsha*, and *Prajapalya*, are allowed the heirs according to the prescribed forms of marriage, have not been enumerated here.

4. (On failure of daughters) daughter's daughter. (Ch. II, Sec. 11, v. 9, 12, 15.) If there be a multitude of them, they take *per stirpes*, and not *per capita*. (Ib. v. 15.) See Ch. I, Sec. 5.) If there be daughters living, a trifle will be given to them. (Ib. v. 17.)

5. The daughter's sons.\* (Ib. v. 18.)

6. Sons. (Ib. v. 19.)

7. Grandsons. (Ib. 0-24.)

8. The step daughters by a rival wife of a superior class are mentioned as heirs, but their place in the line is doubtful. (Ib. 22, 23.)

9. On failure of these the husband and relatives or nearest kinsmen allied by funeral oblations, as mentioned in Ch. II, Sec. 11, v. 9, 11. take the inheritance.

10. The heir of a damsel who dies after being affianced is the bridegroom to such of the articles as have been presented by him (Ch. II, Sec. 11, v. 29, 30) after payment of charges on both sides. But her uterine brothers take along with the bridegroom. But when not affianced, her brother is the heir.

11. The husband has a power over the separate property of his wife during her lifetime, in case of a famine, or for the performance of a duty, or during illness, or while under restraint. (Ch. 2, Sec. 11, v. 31, 32.) †

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# MITACSHARA.

ACHARADHAYA.

## Chapter on Marriage.

1. After having studied the Vedas, and performed the duties of a Brahmachari, or having done either, and having made a gift to the Gooroo, the student shall ask his permission and perform an ablution.

2. After having either finished his studies of the Vedas, or having performed the duties of a Brahmachari in the manner as before prescribed,† or both, the student shall give wealth to his Gooroo, or, according to his ability, something for which the Gooroo may express a desire, and then perform the ablution. But when the student is incapable of giving anything to his Gooroo, then to perform the ablution after receiving his permission.

3. What is he to do after the performance of the ablution?

*Answer.*—After having studied the Vedas, and performed the duties of a Brahmachari, he shall marry a spotless maid.§ He shall marry one who is not an Annoboorbicā, a Sāpindā, &c.

4. A *Sāpindā* is one who is of the same *Pindā* (or body) as the son is of the body of his father, so the grandfather, || and his ancestors are related to the father and with each other in *Pindā* or body, and as the person is related to his mother in *Pindā* or body, so, through the mother, he is related in *Pindā* to the maternal grandfather.¶ Therefore a person is related in *Pindā* to the sisters and brothers of his mother. Accordingly, he is related to the brothers

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\* Do they take *per capita* or *per stirpes*.

† See Ramasami Padeiyatch, vs. Virasami Padeiyatchi. 3 M. H. C. Rep., p. 272; Appendix case 9, p. 96.

‡ In the book on the duties of a Brahmachari. Mitacshara Acharadhaya, Chapter I.

§ *Luo hānyāng striom Oodhbohayt*. A girl without a blemish, possessing all the external and internal beauties. (Here follows the details of the several virtues which are to be sought after in the choice of a wife, but which are here omitted as being beyond the scope of the present work.)

|| *Potamohādeviropi*—Paternal grandfather and the rest, meaning ancestors commencing from grandfather.

¶ *Matumohādeviropi*, maternal grandfather and the rest, meaning ancestors commencing from maternal grandfather.

and sisters of his father. Accordingly, a person is related by *Pindâ* or body to his brother's wife, for a man and wife are of the same body. And, accordingly, wherever there occurs the word "*Sâpindâ*," it is to be understood as mediately or immediately related in body.

5. If *Sapindas* are to be reckoned by being related in body, then there would be no end. This will be spoken of hereafter. \* \* \*

As in this wide world every body would be a *Sâpindâ*, this will be very extensive. To prevent this it is said that the relation of *Sâpindâ* ceases with the fifth ancestor on the mother's side, and the seventh of the father's side. First is the man himself, and sixth from the father, and sixth from the son are the *Sâpindâs*. But in case of descendants of different tribes, it extends to three generations from the person himself.

#### *Sumbhooeeo Summoot'han.*

1. When a man having gone to a foreign country dies, his property goes to the (*Dayada*) heirs, *Band'havahs*, or the kinsmen. In their default the fellow-traders who have been sent abroad, and in their default the property goes to the king.

2. When one of several persons associated in trade dies after having gone to a foreign country, his property goes to his sons or grandsons, and the rest in the order as laid down before; in their default, the property goes to the *Bândhus*, viz., the *Bândhus* on the mother's side, that is, the maternal uncle of the mother and the rest; then gentiles, that is, those besides the persons mentioned. In their default those amongst the fellow-traders who are capable of paying the debt and bestowing the funeral cake. In their default the king takes. The object of the text is to exclude pupil, *Bramachari*, and Brahmins from inheritance, and to include the persons associated in trade.

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#### NIRNAYAJSINDHU.

#### *Chapter on Marriage.*

1. The ancestors, from the fourth degree from the man himself, partake of the *lape* or offering made after an oblation with the *cusa* grass, the partakers of the funeral cake



are from the father, the person who offers the funeral cake is the seventh, these are the Sâpindâs to the seventh degree.

2. In that case how can a paternal uncle be a Sâpindâ ?

Because the same ancestor who partakes of the (shradh) oblation offered by the uncle, also partakes of the oblation offered by the nephew.

3. If some amongst the ancestors who partake of the funeral cake offered at a shradh performed by Devâ Dâtta, also partake of, and receive, the funeral cake offered by another person in the performance of a shradh, the relation of Sâpindâ exists between that person and Devâ Dâtta.

4. So, accordingly, the wives of such persons are Sâpindâs, as they assist in such ceremonies, and as by marriage the husband and wife have become one person.

5. Then how can a maternal uncle be a Sâpindâ ?

Because there is affinity in the *Devata* (or receiver of the funeral cake) in the maternal grandfather.

6. In that case a preceptor and a pupil can be Sâpindâs, as the one has to perform the funeral ceremonies of the other.

So can the king. But the text of Yajnyawalkya limits the Sâpindâs to the seventh degree of the paternal ancestors and fifth of the maternal ancestors. Propinquity must also exist. This shows that although relationship may exist, yet the ascending line of the Sâpindâs is limited.

#### VEERAMITRODAYA.

On failure of the father's Santan,\* the grandmother the grandfather, the paternal uncle, his son (*Putra*) take the inheritance according to their order. On failure of the grandfather's Santan,\* the great grandmother, the great grandfather, the grandfather's brother, and his son (*Sûtâ*), and similarly others up to the seventh degree being Sâpindâs of the same Gotra (or race) partake of the inheritance.

On failure of the Sâpindâs, the Sâmanodâkâs succeed. The Sâmanodâkâs are ancestors of the seventh degree, the ascending line from above the Sâpindâs reaching as far as the memory of birth and name extends. As Menu says,

\* Family race, lineage; Amera Cosha; Offspring, progeny, a son or daughter; Wilson's Sanscrit Dictionary, p. 960.

the Sâpindâs end in the seventh degree of ancestors, the Sâmanodâkâs end in the fourteenth degree of the ascending line, or as some say so far as the memory of birth and name extends, or being of the same Gotra.\* \* \*

The Sâmanodâkâ nearer in affinity would take in preference to one more remote.

On failure of Sâmanodâkâs the Bândhus succeed. There are three sorts of Bândhus: First the Bândhus of the person himself. Second, his father's Bândhus, and third, the Bândhus of his mother, as mentioned in the Smṛiti. "The son of his father's sister, the son of his mother's sister, the son of his maternal uncle, are a man's own cognate kindred. The son of father's paternal aunt, the son of father's maternal aunt, the son of father's maternal uncle, are the Bândhus of a man's father. The son of mother's paternal aunt, the son of mother's maternal aunt, and the son of mother's maternal uncle, are the Bândhus of a man's mother. Amongst them, owing to near affinity, the man's own Bândhus first succeed, after them (on failure of them) the father's Bândhus, and on their failure the mother's Bândhus succeed."

In Smṛiti of Menu, then on failure of them the *saculyas*, the preceptor, the pupil succeed. The term "Saculya" in the text includes "Sagotra" (of the same family), Sâmanodâkâs (or kinsman allied by libation of water), the maternal uncles and the rest; and all the Bândhus. In the text of Yôgeshwara (Yajnyawalkya) the term Bândhu includes the maternal uncle and the rest, otherwise if the maternal uncle and the rest be not included, then their sons would be entitled to inherit, and not they themselves, who are nearer in affinity. This would be highly objectionable.

#### PARASARA MADHAVA.

#### *Bîbâhâ Procârdnum.*

A Sâpindâ is one who is of the same *Pindâ*. The Sâpindâ is one who is within the seventh degree of the ascending line of ancestors. Of the seven persons, the person offering the funeral cake is one, three of them are the receivers of the Pindâ or funeral cake, and three of them from the great grandfather are partakers of the lape\*; so mentioned in the Matsa Purâna, the partaker of the lape\*

\* The offering made with a *Cuna* grass of what remains in the thumb after offering the Pindâ, or funeral cake.

is from the fourth ancestor, the partakers of the Pinda\* are from the father, the giver of the Pinda\* is the seventh person, the Sâpindâs are the seven generations.

So in the Mârcandâ Purana, the father, grandfather, and the great grandfather, (these three) are the partakers of the Pinda\*; the other three being up to the great grandfather of the grandfather are partakers of the lapa the person offering the Pinda (funeral cake) is the seventh in degree. The Sâpindâs are all the six ancestors from the father.

Then, in that case, a brother or an uncle is not a Sapinda, because neither a brother nor an uncle comes within the category above mentioned?

They are Sâpindâs, because the person to whom one offers the funeral cake partakes of the oblation offered by another. Therefore the partaking by an ancestor of the Pinda offered by an uncle or a nephew, and by the person himself, renders that person a Sâpindâ of the uncle or nephew.

Accordingly, the wife of such person is a Sâpindâ to the wife of one whose Pinda\* is shared by a common ancestor, because she assists in such ceremonies.

The opinion of certain other sage† is, one who has the same body with another individual is a Sâpindâ of that individual. The son being immediately related to his father in body is Sâpindâ of the father. Accordingly, such relation is immediate between the father and grandfather, and mediate as between an individual and his grandfather, and so the mother is immediately connected with the maternal grandfather in body, so accordingly the mother is connected in body to her sister, and the father with the father's sister as descended from a common ancestor. Accordingly, the wife being connected in body to her husband by marriage is a Sâpindâ. So a brother's wife is a Sâpindâ.

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#### PARASARA MADHAVA.

As translated in Ilias Koonwur vs. Agund Rai. 24th May 1820. 3 Sel. Rep., Cal, p. 53., Ed. 1868.

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(\*) Funeral cake.

(†) Name not given.

"In the *Parāsārā Mādhava* a *Sāpindā* is thus defined : those are *Sāpindās* who are connected by the tie of consanguinity, for instance, a father and son are *Sāpindās* to each other, and the body of the father is perpetuated in the son without any intervention ; so also the son is by the medium of his father a *Sāpindā* of his paternal grandfather and paternal greatgrandfather ; so also the son by the medium of his maternal grandfather is a *Sāpindā* of his maternal aunt and uncle, and by the medium of his paternal grandfather he becomes a *Sāpindā* of his paternal aunt and uncle ; husband and wife also are reciprocally *Sāpindā*, being connected by the same offspring. The wives of several brothers are also *Sāpindās* to each other, as their respective husbands, with whom they are connected by the same offspring, sprung from the same stock. The relation of a *Sāpindā* exists whenever the same lineage or consanguinity is found to exist."

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PARALATA.\*

*By Anirūddhā Bhāṭṭā.*

The relation of *Sāpindā* is laid down in the *Mutsa Purana*. The partakers of the *lape* (or offering of the funeral oblation with the *Cusa* grass) are from the fourth ancestor, the partakers of the *Pinda* (or funeral cake) are from the father, the giver of the *Pinda* is the seventh, these seven generations are the *Sāpindās*.

The *Kīrmāpurāna* says:—The relation of the *Sāpindā* ends with the seventh person taken in the ascending line from the person himself. The relation of *Sāmanuodākā* continues so far as the memory of birth and name extends. The father, the grandfather, the great-grandfather, the ancestors, commencing from the fourth degree and partaking of the *lape*, are the seven generations who are *Sāpindās*.

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\* This is an authority in Bengal. It has been inserted here on account of the text being from the *Purānās*, whose authority is not denied by any of the Indian schools of Law.

## TABLE OF SUCCESSION.

Son.	With him takes as co-heir— An appointed daughter. (1) Son of an appointed daughter. (2) Adopted son. (3) Unmarried daughter if partition had not taken place during the life-time of the father. (4) Grandsons whose fathers predeceased the grandfather. (5)
Grandson (6.) Widow (7.)	In case the owner had died separated from his co-heirs, otherwise the mother, the father, the brother. (8)
Daughter.	1st,—unmarried. 2nd,—married.

(1) Mit. Ch. 1, Sec. 11, v. 23. If a son be born after appointment, the appointed daughter takes an equal share.

(2) Subod'hini in note to v. 34, Sec. 11, Ch. 1.

(3) If a son be born after adoption, the share of the adopted son is one-fourth. Mit. Ch. 1, Sec. 11, v. 24, 25.

(4) Unmarried sisters must be disposed of in marriage giving them one-fourth of a brother's own share. Mit. Ch. 1, Sec. 8, v. 6, 6, 7, 8, 9, 10, 11, 12, 13, 14.

(5) Mit. Ch. 1, Sec. 5, v. 2.

(6) The allotment of shares of grandsons by different fathers, is according to fathers. Mit. Ch. 1, Sec. 5, v. 1.

(7) Ch. 2, Sec. 1, v. 39.

(8) There is a doubt as to who would take the inheritance in case of a man dying unseparated from his father and brothers, whether the mother or the father or the brothers if the father were dead. No such case has as yet been tried in our Courts, nor is there any express text on the subject. See Mit. Ch. 2, Sec. 3, v. 1. In v. 39, Sec. 1, Ch. 2 of Colebrooke's translation of the Mitacshara the words "from his co-heirs" have been used, but they are not in the original.

**तस्मादपुत्रस्य स्वर्थातस्य विभक्त्यासंघट्टिनः ।**

**परिणीता स्त्री संयता सकलमेव शुद्धातीति स्थितम् ।**

The words are "separated and not re-united," the words "from his co-heirs" do not occur. But re-union can take place only with particular persons, viz., a father a brother, or a paternal uncle. If there has been a re-union with a brother or an uncle, would the mother or the re-united brother or uncle have the preference in succession?

- If the competition be between an enriched and an unprovided daughter. (9)  
 1st,—the unprovided daughter.  
 2nd,—the enriched daughter.  
 Mit. Ch. 2, v. 1, 3, 4.
- Daughter's son. Son of other than appointed daughter. Mit. Ch. 2, v. 6.
- The mother (10.) The step-mother has no right to inherit. Lalla Johee Lall *vs.* Deo Banee Koonwur. S. N. W. R., p. 173, case 46, Appendix, p. 53.
- The father. (10.) In case of re-union with a half-brother, and if an uterine brother be living separate and not re-united, they both shall take and divide the heritage. (13) Mit., Ch. 2, Sec. 9, v. 7, 8. Uterine sisters also partake in the inheritance. *Ib.*, v. 12, 13.
- Uterine brother. (11.)
- Half-brother. (12.)
- Uterine brother's sons. (13)
- Half-brother's son. (14)

*The Gotraja or Gentiles.*

- 1st, Sagotra Sâpindâ. (15.)
- Paternal grandmother,  
 " " father.  
 Father's brother (16.)  
 " brother's son.

(9) *Quere.*—Who shall have the preference if the competition be between a provided but an unmarried daughter, and an unprovided but a married daughter?

(10) Mit. Ch. 2, Sec. 3, v. 1, 2, 3, 4, 5.

(11) Mit. Ch. 2, Sec. 4, v. 1, 5.

(12) *Ib.* v. 6.

(13) But not so in case of nephews. If the competition be between brothers of the half-blood and the nephews of the whole blood, the half-brothers take in preference to the nephews. Mit. Ch. 2, Sec. 4, v. 7.

(14) But he takes before the brother if the deceased had been living separate from his surviving brother, and joint with the nephew. Kesubram Mohaputtur *vs.* Nandkissore Mohaputtur. 3 B. L. R., A. C., p. 7; Appendix, case 55, pp. 53, 54. The nephews take *per capita* and not *per stirpes* as in case of grandsons. Mit. Ch. 2, Sec. 4, v. 7, and note thereto.

(15) See Addenda.

(16) The brothers and nephews of the whole blood would exclude brothers and nephews of the half-blood as above.

Great grand mother.

„ „ father.  
Grandfather's brother.

„ „ brother's son.  
Great great grand-mother.

„ „ „ father.  
„ grandfather's brother.

His son.  
Grandfather's great grand mother.

„ „ „ „ father.  
Grat great grandfather's brother.

„ „ „ „ brother's son.  
Grandfather's great great grand mother.

„ „ „ „ father.  
„ great grandfather's brother.

„ „ „ „ brother's son.  
Great grandson.

Grandson's grandson.

„ great grandson.  
„ „ great grandson.

Brother's grandson.

„ great grandson.  
„ „ great grandson.

His son.  
Father's brother's grandson.

„ „ great grandson.

„ „ „ great grandson.  
His son.

Grandfather's brother's grandson.

„ „ great grandson.

„ „ „ great grandson.  
His son.

Great-grandfather's brother's grandson.

„ „ great grandson.

„ „ „ great grandson.  
His son.

Great-great grandfather's brother's grandson.

„ „ „ great grandson.

„ „ „ „ great grandson.  
His son.

Grandfather's great grandfather's brother's grandson.

„ „ great grandson.

„ „ „ great grandson.  
His son.

- *Asāgotrā Sāpindā.**These are classed as Bāndhus.*

Sister's son. (17)

Maternal grandfather.

" uncle. (18)

" " son. (19)

" great grandfather.

" grandfather's brother.

His son.

Maternal great great grandfather.

" " grandfather's brother.

His son.

*Sāmānodākās.*

The eighth ancestor.

Brother of the seventh ancestor.

His descendants to the eighth degree.

This reaches as far as the fourteenth degree in the ascending line, each line of a particular ancestor running down to a descendant in the fourteenth degree would be a *Sāmānodākā* to the deceased. *On failure of the Sāmānodākās, the Bāndhus succeed. They are—*

1. The Bāndhus of the man himself.

The sons of his father's sister.

" " mother's sister.

" " maternal uncle. (20)

2. The Bāndhus of his father.

Sons of his father's paternal aunt.

" " " maternal uncle.

His father's maternal uncle. (21)

Sons of his father's maternal uncle.

3. The Bāndhus of his mother.

The sons of his mother's paternal aunt.

" " " maternal aunt.

His mother's maternal uncle.

The sons of his mother's maternal uncle.

(17) The sister's son is placed by NUNDA PUNDITA and BALLAM BHATTÀ as next in rank to brother's son. See Mit., Ch. II, Sec. 4, v. 7, and the note thereto.

(18) See Mit. Acharadhaya, in the Addenda.

(19) He is reckoned as a Bāndhu. Mit., Ch. II, Sec. 6, v. 1.

(20) He can be classed as a Sāpindā. See above. We have not placed the maternal uncle as a Bāndhu as he has been classed as a Sāpindā.

(21) We have found no authority, but by analogy he is an heir. See *Addenda*. Translation from the Mitacshara, Chap. Sambhooce Sam-moot'han.



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*Succession of Strangers.*

Preceptor.

Pupil.

Fellow-student.

Learned Brahmin.

The King. (22)

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(22) See Mit., Ch. II, Sec. 7, v. 6; and Collector of Musulipatam vs. Cavalry Vencatah Narainapah. 8 M. I. A., p. 500; Appendix, p. 37.

# ABBREVIATIONS

## USED IN THE APPENDIX.

ABBREVIATION.	NAME OF WORK.
Bourke	... Reports of cases decided. By the High Court of Calcutta. By W.M. Bourke.
B. L. R.	... Bengal Law Reports.
A. C.	... Do. appellate cases.
O. C.	... Do. original cases.
P. C.	... Do. Privy Council Cases.
B. H. C. Reps.	... Reports of cases decided by the High Court of Bombay.
A. C. J.	... Do. appellate cases.
O. C. J.	... Do. original cases.
B. S. D. A.	... Decisions of the Sudder Dewanny Adawlut of Bombay.
Borr.	... Reports of cases decided by the Sudder Dewanny Adawlut of Bombay. By H. Borrodaile.
Fulton	... Reports of the Supreme Court of Calcutta. By Fulton.
H. C., N. W. P.	... Decisions of the High Court of the North-Western Provinces.
Hyde	... Hyde's Reports of cases decided by the High Court of Calcutta.
"Indian Jurist"	... Edited by L. A. Goodeve.
Knapp	... Knapp's Privy Council Cases.
M. S. D. A.	... Decisions of the Sudder Dewanny Adawlut of Madras.
M. H. C. Reps	... Reports of cases decided by the High Court of Madras. By O'Sullivan and Mills.
M. I. A.	... Moore's Indian Appeals.
Marshall	... Reports of cases decided by the High Court of Calcutta. By Marshall.
Montriau, C. H. L.	... Cases of Hindu Law decided by the Supreme Court of Calcutta. By W. A. Montriau.

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Oudh Sel. Cases ...	Report of Select Civil cases decided by the Judicial Commissioner of Oudh.
S. D. A., Bom. ...	Decisions of the Sudder Dewanny Adawlut of Bombay.
S. D. A., Cal. ...	Decisions of the Sudder Dewanny Adawlut of Calcutta.
S. D. A., Mad. ...	Decisions of the Sudder Dewanny Adawlut of Madras.
S. D. A., N. W. P....	Decisions of the Sudder Dewanny Adawlut of the North-Western Provinces.
Sel. Rep. ...	Select Reports.
"  "  Cal. ...	of the Sudder Dewanny Adawlut of Calcutta.
"  "  S. D. A., } Bom., }	"  "  Dewanny Adawlut of Bombay.
S. N. W. R. ...	Special number of the Weekly Reporter containing Full Bench Cases of the Calcutta High Court.
Sevestre. Con. Mar.	Sevestre's Reports of the High Court of Calcutta in continuation of Marshall.
Stokes ...	Stoke's Reports of the cases decided by the High Court of Madras.
Str. N. M. C. ...	Strange's notes of cases decided by the Supreme Court of Madras.
Suth. P. C. Cases...	Privy Council Cases edited by D. Sutherland.
Suth. Rep. ...	Sutherland's Reports of the decisions of the High Court of Calcutta from January to July 1864.
W. R. ...	Sutherland's Weekly Reporter containing decisions of the High Court of Calcutta.
Wvm. ...	Revenue, Civil, and Criminal Reporter, containing cases decided by the High Court of Calcutta. Published by Wyman and Co.

## APPENDIX.

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*Containing abstracts of cases decided by the superior Courts of India and by the Honorable the Privy Council on points of Hindu Law. Such cases as have been decided under the Hindu Law as current in Bengal, but which can bear an analogy to the Hindu Law as current in the other Provinces of India, have been enclosed within brackets thus [ ].*

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### ABSENTEE.

*See "Disappearance."*

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### ACQUISITION.

*See "Property"—"Acquisition of."*

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### ADMISSION.

1, In a former suit the plaintiff consented to the question then at issue, namely, the validity, of an adoption to be tried according to the provisions of the Bengal Law. *Held*, that the admission did not, under the circumstances, make him subject in all matters (the Law of Inheritance for instance) to the Bengal law. *Rambromo Panday vs. Kameenee Soondary Dabee*. 1 W. R., pp. 124-25.

2. *Held*, that in case of ancestral property, the admission of a father may be used as evidence against his sons, but is not conclusive, and does not stop the sons from contending that such admission was collusive or erroneous. *Nowbut Ram vs. Durbaree Singh*. H. C. N. W. P. Vol. II., p. 145.

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### ADOPTION.

1. *Who may adopt.*
2. *Who may give in adoption.*
3. *Who may be adopted.*
4. *The form to be observed in adoption.*
5. *Time of adoption.*
6. *Evidence of adoption.*

7. *Effects of adoption.*
8. *Rights of an adopted son in the Duttaka form.*
9. *Effects and rights under other forms of adoption.*

1.—*Who may adopt.*

1. A widow may adopt a son with the consent of her husband or of her relations. *Ranee Sevagamy Nachair vs. Streemathoo Heraniah Gurbah.* Case 18 of 1814. 1 S. D. A., Mad., p. 101.

2. Adoption by a widow without the permission of her deceased husband, nor with that of her caste alleged to be in a distant land, nor confirmed by the ruling power of State, considered valid.

The Hindu law upon the subject discussed. *Sree Brijbookunjee Muharaj vs. Sree Gokoolutsaojee Maharaj.* 1 Borr., p. 202.

3. A widow is competent to adopt without the orders of her late husband, who thereupon succeeds to his estate, provided there had been no prohibition by the husband.

The husband has full power to adopt a son without the consent of his wife.

The age in which a person may be adopted is not fixed in the Shastars.

The proper person to adopt is the son of one's own brother. If he cannot get him, then one within the seventh degree of his own blood relations on the father's side (*sugotra supinda*). If such a one cannot be found, then the same on the mother's side (*usugotra supinda*), and in default of them the *sugotra usupinda* blood relations on the father's side beyond the seventh degree.

If the (near) relations will not give up one of their sons, he should take a son of a *sugotra* or of a *purgotra*, no relation, provided that the boy have not been invested with the Brahminical thread.

The adoption of a nephew is legal if performed by word of mouth alone.

The sin of a forbidden adoption lies with the giver, not with the receiver.

An adoption having taken place, cannot be annulled.

*Huebut Rao Mankur vs. Govind Rao Bulwunt Rao Mankur.* 2 Borr., p. 83.

4. Adoption by a widow without the permission of her husband (there being no prohibition by his mother) held to be valid, and that such adopted son was entitled to succeed. (See the authorities here cited.) *Ramajee Hurree Bhide vs. Thuckoo Bae Bhide*, 2 Borr., p. 485.

5. A widow cannot make a valid adoption without either the authority of her husband or the assent of his *Sapindas*. *Arundádi Ammál vs. Kuppaonmál*. 3 M. H. C. Rep., O'Sullivan and Mills, p. 283.

6. If a Hindu by his will expresses a wish to be represented by the unborn son of a particular person whom he names, who has but one son at the time, and who has no other living at the death of the testator, his widow is not bound to wait indefinitely the birth of a second son, but may adopt any competent person she thinks proper.

It is not necessary that the person adopted by a widow after the death of her husband, should have been named by him. It is sufficient that she had his authority to adopt, express or implied. This is indispensable. *Veerupermall Pillay vs. Narain Pillay and others*. 1 Str. N. M. C., p. 91.

7. A Hindu cannot adopt a son, he having already an adopted son, and a son born. *Yachereddy Chinna Bassapa and others vs. Yachereddy Gowdapa*. December 4th, 1835, Suth. P. C. Cases, p. 41.

8. According to Hindu law current in the Dravida country, a widow, not having her husband's permission, may, if duly authorized by his kindred, adopt a son to him.

The question—who are the kinsmen whose assent will supply the want of positive authority of the deceased husband? must depend upon the circumstances of the family in each case. There must be such evidence of the assent of the kinsmen as suffices to show that the act is done by the widow in the *bond fide* performance of a religious duty, and not capriciously, or from a corrupt motive. The widow cannot adopt, where there is a prohibition by the husband, direct or implied. *The Collector of Madura vs. Mutu Ramalinga Sathupathy*, 1 B. L. R., P. C., p. 1.

9. In an adoption made by a Hindu widow, under authority conferred upon her for that purpose by her husband, the authority must be strictly proved, and, as the adoption is for the husband's benefit, the child must be adopted to him,

and not to the widow alone. An adoption by the widow alone would not, for purposes of Hindu law, give the adopted child, even after her death, any right to property inherited by her from her husband.

*Held*, in the present case, that the evidence did not support the contention that the adopted son of the widow had been adopted to the husband. *Chowdry Padam Sing vs. Kooer Udaya Sing*. 2 B. L. R., P. C., p. 101.

10. An adoption by a widow after her husband's death, without any authority from him, is invalid. *Raja Haimun Chull Sing vs. Koomer Gunesham Sing*. 2 Knapp, p. 203.

11. *Held*, in the case of a Hindoo widow of the Nagar Brahmin caste, who had adopted a son, that it was not essential that she should have obtained the authority of her husband to make the adoption valid. *Virbudru Hurrybudru vs. Bae Ranee*. 17th November 1847. S. D. A., Bom., p. 1.

12. According to the Hindoo law as current in Benares, an adoption, made by a widow without authority from her husband, is illegal. *Rajah Shumshere Mull vs. Ranee Dilraj Koonwar*. 31st January 1816. 2. Sel. Rep., Cal., p. 216.

13. The permission of the husband is necessary to legalize adoption by his widow in the Duttaka form. *Jai Ram Dhami vs. Musan Dhami*. 14th January 1830. 5 Sel. Rep., Cal., p. 3.

14. [A Hindoo widow cannot, on the death of one adopted son, adopt another without special permission to do so. *Gournath Chowdry vs. Arnopoorna Chowdrain*. 27th April 1852. S. D. A., Cal., p. 332.]

15. [A power to adopt cannot be given by a disqualified landholder without the consent of the Court of Wards. *Neelakunth Dutt vs. Anundomoye Chowdrain*. 30th April 1855. S. D. A., Cal., p. 218.]

16. The right of a Brumcharee to adopt rests on local usage. *Gunnappa Deshpandee vs. Sunkapat Deshpandee*. Sel. Rep., S. D. A., Bom., p. 229.

17. A widow can, notwithstanding any default of authorization by her late husband, adopt a son by the consent of her husband's nearest male relations. *Appanien-gar vs. Alemaloo Ammal*. M. S. D. A. 1858. p. 5.

## 2.—Who may give in adoption.

18. If the father of the boy to be given be dead, the consent of the elder son as representing him, is sufficient ; the consent of the mother may be presumed from circumstances. *Veerapermall Pillay vs. Narain Pillay* and others. 1 Str. N. M. C. p. 91.

19. Although a widow may not have obtained the consent of her husband during his life to give their child in adoption, it is nevertheless competent to her, having obtained the consent of her father, brothers, &c., to give her younger son in adoption. *Arnachellum Pillay vs. Jyasamy Pillay*, Case 5 of 1817, 1 S. D. A., Mad., p. 154.

20. [*Semble.*—The Hindoo law does not prevent a leper from giving his son in adoption. *Aunundmohun Mozoomdar vs. Govind Chunder Mozoomdar*. Suth. Rep. p. 173.]

21. A woman after her husband's death is incompetent to give her only son in adoption as a *Dwyamushyayana* without authority previously given by her deceased husband. *Debee Dial and Mussamut Hullasee vs. Hur Hor Singh*. 29th December 1828. 4 Sel. Rep. Cal., p. 320.

## 3.—Who may be adopted.

22. An orphan cannot be adopted. *Subbaluvamah vs. Ammakutty Ammul*, 2 Stokes, p. 129.

23. A son-in-law cannot be adopted. *Saundariyammul vs. Kamatchiy Ammul*. M. S. D. A. 1859, p. 250.

24. A person of the Sudra caste may adopt a son from a Gotram different from his own. *Rungama vs. Atchama*. 4 M. I. A., p. 1.

25. The adoption of a sister or of a brother, to the prejudice of the legal heirs is illegal and invalid. *Tooloovya Chetty vs. Coraga Chetty*. 13 October 1849. S. D. A. Mad., p. 57.

26. The weight of authority is against the validity of an adoption of one upon whom the *Upanayana* has been already performed. In strictness, there is no authority on the other side. *P. Venkatesaiya vs. M. Vencata Charlu* ; 3 Mill's M. H. C. Rep., p. 28.

27. The adoption of an elder son is improper, but not invalid. If a man have two wives and by the first a son, and by the second several ; the elder of those by the younger wife may be given and received in adoption. *Veerapermall Pillay vs. Narain Pillay* and others, 1. Str. N. M. C., p. 91.



28. Adoption by a woman of a female heir is not permitted. *Doe Dem. Hemcower Bye vs. Hanscower Bye. Montriou, C. H. L., p. 553.*

29. Adoption by a childless Hindu of the Vaisya or third class of Hindus of his sister's son, upheld. *Ramalinga Pillai vs. Sadusive Pillai. 11 M. I. A., p. 506.*

30. It is now well-settled law that the adoption of a sister's son by a Hindu of the Vaishya caste is valid. *Ganpatrao Vioreshnar et al vs. Vithoblaá Khandáppá et al. Vol. IV., B. H. C. Rep., A. C. J., p. 130.*

31. The adoption of a brother's eldest son by another brother's widow is invalid. *Jugbundoo Ram Singh vs. Radha Sham Narendro Mahapattur. 30th November 1859. S. D. A., Cal., p. 1556.*

32. The adoption of a brother is invalid. *Moottia Moodel-ly vs. Uppon Vencata Chary. M. S. D. A., 1858, p. 117.*

33. [By Hindu law, an only son may be adopted even after tonsure. *Joymoney Dossee vs. Sibosoondry Dossee. 1. Fulton, p. 75.*]

34. [The adoption of an only son is blameable, but when done, it is valid.—*Ibid.*]

35. The adoption of a brother's eldest son by another brother's widow is invalid. *Jugbundhoo Run Sing vs. Radhasham Norendro Mohapatter. 30th Nov. 1859. S. D. A., Cal., p. 1556.*

36. [The adoption of an only son is invalid. *Rajah Opendra Lal Roy vs. Srimuti Ranees Prosunua Moye. 1. B. L. R., A. C., p. 221.*]

37. The adoption of an only son is, when made, valid according to Hindu Law. *Chinua Gaundan vs. Kumara Gaundan; 1 Stokes, p. 54.*

38. An only son cannot be legally given or received in adoption; therefore it is not lawful for a man to adopt the only son of his brother in preference to the youngest son of his paternal uncle. But if such an adoption should take place, although both the giver and receiver in adoption have thereby committed sin, the adoption is valid. *Arna-shellum Pillay vs. Jyasamy Pillay. Case 5 of 1817, 1 S. D. A. Mad., 154.*

39. *Semble.*—An only son once adopted, the adoption cannot be invalidated. *Nundram and others vs. Kasee Pande and others. 30th June 1825, 4 S. D. A., Mad., p. 70.*

40. Neither length of time after the decease of her husband, nor the adoption having taken place at other than the place of residence of the parties, nor want of the permission of the ruling authorities, are sufficient grounds for setting aside an adoption once made with sufficient ceremonies.

The following Vyvustha was given in this case :—

1. An adoption should be made in the following line: A younger son of a brother, failing him a son of a Sâgotra Sâpinda, and failing him of the Jât.
2. The period of adoption is nowhere restricted in the Shastars, but it must be after the widow has attained the age of puberty ; and, if duly performed, must be upheld.
3. The place for performing the ceremony of the adoption is nowhere restricted to the place of the residence of the family adopting ; a boy may be taken for adoption wherever he may be found, and if the adoption is made in observance of proper ceremonies, it will be valid.
4. The Mitacshara is silent as to whether the husband's order is requisite or not for a widow to adopt ; and the Muyookâ declares the order not requisite, though a wife can only adopt under her husband's consent during his lifetime. It is written in the Veerâmitrodayâ—"He who is without children, let him adopt that he may avoid the place of torment," and therefore a widow is permitted to adopt without having received the express command of her husband.

The adopted son will inherit the same as a son born in wedlock, *viz.*, the property of both the adoptive father and mother. Bhasker Bucharjee *vs.* Narro Ragoonath. Sel. Rep., S. D. A., Bom., p. 31.

41. Adoption of a grown man of another tribe is not a regular adoption. Sheo Narain *vs.* Mussamut Dooga Dall, Oudh Sel. Cases, part 2, p. 141. 16th October 1862.

42. According to the Law current in Mithila, a brother cannot be adopted by a brother. Baboo Runjeet Sing *vs.* Baboo Obbye Narain Sing. 26th July 1817. 2 Sel. Rep. Cal., p. 315.

*See cases 3, 6, ante.*

#### 4.—*The form to be observed in adoption.*

43. Essentials of adoption by the Hindu law are the giving and receiving. *Veerapermal Pillay vs. Narain Pillay and others.* 1 Str. N. M. C., p. 91.

44. A verbal power to adopt is good by Hindoo Law. *Soondur Koomaree Dabea vs. Guddadhur Pershaud Tewary.* 7. M. I. A., p. 54.

45. [In a suit for confirmation of a right to adopt a son and to cancel deeds of agreement to give and receive the defendant's son in adoption. *Held*, that to complete an adoption, there must be an actual giving and receiving, and that the execution of the deeds was not sufficient. *Held* further, that the plaintiff was entitled to a declaration of the cancelment of the deeds, as they might hereafter cast a cloud over her title. *Srinarayan Mitter vs. Srimati Krishna Sundari.* 2 B. L. R., A. C., p. 279.]

46. Where the gift and acceptance of a second son preceded the death of an elder son, it was held that the full completion of his adoption was legal. *Mussamut Dullabha De vs. Mull Bebee.* 27th July 1830. 5 Sel. Rep., Cal., p. 50.

*See Cases 3, 4, 5, 6, 9, 10, 11, 12, ante.*

#### 5.—*Time of adoption.*

47. The sooner adoption takes place after the death of the deceased the better. The adoption is good, though the adopted be above five years of age, and have undergone the ceremony of purification, provided he be the son of a near relation of the adopter, though not a Sagotra, *i. e.*, not descended from a direct male line from one common male ancestor.

The restriction as to age respects only the three superior classes. The criterion is not the particular age of the adopted, but whether he has undergone the ceremony of inauguration, namely, that of tonsure and boring the ears. *Veerapermall Pillay vs. Narain Pillay and others.* 1 Str. N. M. C., p. 91.

48. The adoption of a married boy is illegal. *Ranee Sevagamy Nachiar vs. Streemathoo Heraniah Gurbah.* Case 18 of 1814. 1 S. D. A., Mad., p. 10.

49. An adoption of a married man twenty-eight years old, though of the Sudrá caste, was held to be invalid, an adoption after marriage being illegal and void, *Chetty*

Colum Prusunna *vs.* Chetty Colum Moodoo. Case 7 of 1823. 1, S. D. A., Mad., Dec., p. 406.

50. The rules fixing the age at which a child may be adopted are not the same in every caste. A child may be adopted from the twelfth day after its birth to the day of the *Upanayanā*, or tying on the thread worn across the body: the age for performing the *Upanayanā* is for Brahmans eight years, for Kshetriyas eleven, for Vaisyas twelve: Sudras may be adopted till the sixteenth year. Ranev Sevagami Nachair *vs.* Streemathoo Heraniah Gurbah. Case 18 of 1814. 1 S. D. A., Mad. p. 101.

51. Age of five years does not limit the period of eligibility for adoption. Mussamut Dullabha De *vs.* Mann Bibi. 27th July 1830. 5 Sel. Rep., Cal., p. 50.

52. Tonsure performed in the family of a natural father after gift has no vitiating effect.—*Ibid.*

53. The adoption of a Soodur (otherwise eligible) is permissible at any age previous to his marriage, as that of boys of the higher castes is at any age before investiture of the thread (*oopanyana*). Gour Nath Chowdry *vs.* Arno-poorna Chowdrain. S. D. A., Cal., 1852, p. 332.

54. A., a Brahmin boy, when given in adoption to his uncle, was of the age of twelve years. *Held*, that the initiatory ceremony of investiture not having been performed, his adoption was valid. Ramkissore Acharj Chowdry *vs.* Bhoobun Moye Dabca. S. D. A., Cal., 7th March 1859, p. 229.

55. Plaintiff was entitled to a share of the estate of the defendant, a widow, in case the defendant should die without having exercised the right to adopt under the direction of her husband. Defendant having failed to adopt within a year, plaintiff sued for his share. *Held*, that the plaintiff had no title to present possession, and that the suit must be dismissed. Ramun Ammal *vs.* Subban Annair. 2 Stokes, p. 399.

56. The adoption of a Brahmin is valid if made before the *Upanayanam* had been performed, though the boy may have passed the age at which that ceremony ought, according to strict rule, to have been accomplished. Sreenuvasein *vs.* Sashyamonul. M. S. D. A., 1859, p. 118.

*See Case 3, ante.*

### 6.—Evidence of adoption.

57. The greatest strictness is required in evidence to prove an adoption in a Hindu family. *Sooturgen Sutputty vs. Sabitra Dye*. 2 Knapp, page 287.

58. In a case to set aside an adoption, on the ground that the ceremonies had not been performed, where there was satisfactory evidence showing that the adoption had been continuously recognised for a series of years, and that the party adopted had been in possession, either in person or through his guardian, of the property in dispute. *Held*, that the Court may well dispense with formal proof of the performance of the ceremonies, unless it were distinctly proved, on the part of the plaintiff, that the ceremonies had not been performed. *Saboo Newa vs. Nahagun Maiti*. 2 B. L. R. *Appendix*, p. 51.

59. Among Sheikhs, adoption may be inferred from conduct, without ceremonial. *Doc Dem. Kissen Chunder Shaw vs. Baudam Bebee*. *Montrieu C. H. L.*, p. 524.

In cases in which permissions to adopt are propounded, contemporariety of execution and publication is the best test of the genuineness of the deed set up, and in the absence of this test all the circumstances bearing upon the alleged deed, and all the probabilities for and against its genuineness, must be thoroughly considered. *Ranee Monmohcnee vs. Rajnarain Bose*. 21st February 1857. *S. D. A., Cal.*, p. 244.

60. [That a valid regular judgment in this country upon the status of an alleged adopted son is a judgment *in rem*, and as such conclusive and final against all the world; and that a summary adjudication of the same nature, though not conclusive, is *primâ facie* proof of the fact adjudicated, and sufficient to throw the burden of disproving the same on the opposite party. *Collector of Moorshedabad vs. Kistomonce Dabea*, and *Kassessuree Dabea vs.* the same. *S. D. A., Cal.*, 30th April 1859, p. 549.]

61. *Held*, that ceremonial adoption was necessary to constitute a son (not begotten), and in the absence of proof of such adoption, a right of inheritance could not be admitted. *Luchman Sing vs. Government*. 29th March 1866. *S. D. A., N. W. P.*

62. In a former *bond fide* litigation to which the defendant was no party, the status of the plaintiff as an adopted

son was in issue, and disposed of in his favor. *Held*, that that was good evidence of the adoption in the absence of better evidence for the defendant. *Sectaram vs. Jug-gobundo Bose*. 2 W. R., p. 168.

*See Cases 8, 9, ante.*

#### 7.—*Effects of adoption.*

63. A member of a Hindu family cannot, as such, inherit the property of one taken out of that family by adoption. The severance of an adopted son from his natural family is so complete, that no mutual rights as to succession to property can arise between them. *Srinivasa Ayyangar vs. Kuppan Ayyangar*. 1 Stokes, p. 280.

64. The theory of an adoption is a complete change of paternity; the son is to be considered as one actually begotten by the adoptive father and is so in all respects, save an incapacity to contract marriages in the family from which he was taken. In the Andara country, as in Bengal, a Brahmin cannot adopt his sister's son. *Narasammal vs. Ballarama Charlu*. 1 Stokes, p. 420.

65. An adoption by a widow has a retrospective effect, and, relating back to the death of the deceased husband, entitles the adopted to succeed to his estate. A document, purporting to be a deed of adoption does not require to be stamped. *Ráje Vyankatrao Anand-rao Nimbaliker vs. Jayavantrav Bin Malharrao Ranadien*, 4 B. H. C. Rep., A. C. J., 191.

66. The natural mother of an adopted son may, as "*next friend*," sue to establish his right, legal extinction of her maternity notwithstanding. *Mussamut Dulubb De vs. Maun Bibi*. 27th July 1830. 5 Sel. Rep., Cal., p. 50.

67. [The relatives of an adoptive mother inherit the property of her adopted son, just as they would have succeeded to a natural born son. *Gungpersaud Roy vs. Brijessurree Chowdrain*. 3th July 1859. S. D. A., Cal. p. 1091.]

68. [Power to adopt in a widow does not, *per se*, according to Bengal School, divest her of her life interest. *Bamun Doss Mookerjee vs. Tareenee Dabce*. 30th September 1850. S. D. A., Cal., p. 533.]

69. The adoption by a Hindu widow of an only son, if valid in every other respect, cannot be set aside by reason of the adopted being an only son of an advanced

age. Ruye Vyandratrao Anund Rao Nimbat Kar *vs.* Jayavantrur Bin Malharao Ranadien. 4 B. H. C. Rep., A. C. J., p. 191.

70. An adoption once made in proper form cannot be set aside, though both giver and receiver in adoption may have committed sin in allowing it. Vishram Baboorow *vs.* Narainrow Kasee. 15th May 1857. S. D. A., Bom., p. 26.

*See Cases 3, 4, ante.*

*See "Liability of an heir," 6.*

8.—*Rights of an adopted son in the Duttaka form.*

71. An adopted son has all the rights of a son born. Moharajah Juggurnath Sahaic *vs.* Musst. Mukhun Koonwar. 3 W. R., p. 24.

72. No cause of action to set aside illegal acts of an adopting mother, arises to the adopted son either from the date of his obtaining possession, or from the date of final decision in any case brought for him or against his mother, or by or against him to prove or disprove the validity of his adoption. Kishen Mohun Koond *vs.* Muddun Mohun Tewary. 5 W. R., p. 32; 1 Wym., p. 74.

73. An adopted son is entitled jointly with his adoptive father to the ancestral estate, and also to the profits accruing after his adoption. Sudanund Mohaputtur *vs.* Soorjomonce Dabee. 8 W. R., p. 486; 5 Wym., p. 5.

74. A Hindu whose adoption is invalid, is entitled to maintenance in his adopter's family. As against an adopted son suing for his share of the ancestral estate, the Law of Limitation does not begin to run until the allotment of such share has been demanded and refused. A share of an adopted son is one-fourth of the share of a son born to the adoptive father, after the adoption. Ayyon Muppanar *vs.* Niladhatchi Ammal. 1 Stokes, p. 45.

75. The adopted son of one whose alleged adoption has been held invalid can make no claim through his adoptive father to be maintained by the alleged adopter.

The natural rights of a person adopted remain unaffected when the adoption is invalid. Bawain Sankara Pandit *vs.* Ambabay Ammal. 1 Stokes, p. 363.

76. An adopting father cannot disinherit a son properly adopted agreeably to the laws of the Dharmā Shastrā even for bad behaviour; neither can he adopt another son.

But should a man take another for the purpose of adopting him, and change his mind before full performance of the ceremony for adoption, as laid down in the Shastrâ, he is at liberty to put aside the first person, and to adopt any other whom he may choose. *Dace vs. Motee Nuthoo*. 6th October 1813. 1 Borr., 84.

77. [A Hindu died after leaving direction to his widow to adopt a son. Upon a partition of the joint property amongst his brothers and widow, a certain property was allotted to his widow as her share of the joint property. Afterwards, in 1849, his brothers dispossessed the widow. In 1851 she adopted a son who attained his majority in 1865, and in 1866 instituted the present suit for possession of the property. *Held*, that the possession of the widow previous to the adoption, was not that of a trustee for the son to be adopted. *Held*, that the suit was barred by lapse of time. *Gobind Chundra Surma Mozoomdar vs. Anand Mohun Sarma Mozoomdar*. 2 B. L. R. A. C., p. 313.]

78. *V.*, a zemindar in the Northern Circars, in Madras, of the Soodra caste, being childless, adopted, with the consent of his wife, a son *J.* At the time of this adoption, he executed a deed with the natural father of *J.*, by which he undertook to make him heir to his zemindary and wealth. *V.* subsequently married a second wife, and during the lifetime of his adopted son *J.* adopted a second son *R.* Both these adopted sons lived in *V.*'s house, who, while they were minors, made a division of his ancestral and other estate between them in certain proportions. *J.*, when he came of age, entered into possession of his share for him, and died during his minority. At *V.*'s death *J.* claimed the right of succession to the whole of *V.*'s estate and property, insisting that *V.* was precluded from alienating any portion of the estate to the prejudice of his first adopted son, and that the adoption of *R.* during his lifetime was illegal and void. The Sudder Dewanny Adawlut at Madras decided that the second adoption was valid. *Held*, upon appeal by the Judicial Committee of the Privy Council, reversing that decree, first, that, according to the Hindoo law, a second adoption of a son, the first adopted son being alive, and retaining the character of a son, was illegal and void.



The consent of a wife to the adoption of a son by her husband, a childless Hindoo, is not essential to the validity of the adoption. Adoption is the act of the husband alone, although the wife may join in it. *Rungama vs. Atchama*. 4 M. I. A., p. 1.

79. A childless Hindoo, by deed, directed his wife to adopt a child. After his death his widow brought a suit for a partition, and to be put in possession of her husband's share in the joint undivided estate. Pending the suit, she adopted a son. By the Hindoo law, the act of adoption divested the property from the widow, and vested it in the adopted son, subject to the maintenance of the widow. Notwithstanding the adoption, the suit was prosecuted in the widow's name, and a decree made, directing her to be put in possession. *Held*, in such circumstances, that she prosecuted the suit as the guardian of the adopted son, and was put into possession as his trustee, and accountable to him for the profits of the property. *Dhurin Das Pandey vs. Mussamut Shama Soondery Dasse*. 3 M. I. A., p. 229.

80. [An adopted son, according to the Hindu law, is entitled to succeed to his collateral as well as direct relations, by adoption. *Sumboo Chunder Chowdory vs. Narain Dibe*. 3 Knapp, p. 55.]

81. [A. being childless executed a deed of Onoomuttee Putro, by which he gave permission to his wife to adopt a son. He afterwards had a son B. by his wife C. Two years after his son's birth, and while he was living, he executed another Onoomuttee Putro, whereby he authorized C., in case of B's death, to adopt a son. B. on coming of age succeeded to the property of his father, who had died. B. died childless, leaving a widow D. Some time after B's death, C. exercised the power given her by A. by adopting a son G. *Held*, first, that the instrument was simply a permission to adopt, as, in the absence of any devise, it could not be considered as of a testamentary character; second, that the adopted son by the Hindoo law takes by inheritance, and not by devise, and as by that law, in the case of inheritance, the person to succeed must be the heir of the full owner, and his wife succeeded at his death as his heir to her widow's estate; third, that the adoption by B. was void, as the power was incapable of execution. *Mussamut*

Bhoobun Moyce Debia *vs.* Ramkissore Acharj Chowdry. 10 M. I. A., p. 279.]

82. In this case the defendant adopted the plaintiff. when he was a child. During his minority his adoptive mother, the defendant, squandered away her late husband's property, and contracted debts. Afterwards she refused to render an account to him as to how she had managed the property in question. *Held*, that an adopted son was, by Hindoo law, liable for the *bonâ fide* debts of his adoptive mother. She was bound to render to him an account of her late husband's property, or pay the damages claimed. Nurhur Shamrao *vs.* Yeshoda Baee Kome Sham Row Govind and Narrain Bappoojee Bheeday. 23rd March 1847. S. D. A., Bom., p. 65.

83. [An adopted son is not actually precluded from ever questioning acts done by his mother during his minority, or before his adoption, in the manner as any other reversioner. Yet a sale by a widow, with the consent of all legal heirs at the time existing, and ratified by decrees of Court, is binding on reversioners as well as on an adopted son adopted long after the sale. Rajkristo Roy *vs.* Kissorymohun Mozoundar. 3 W. R., p. 14.]

84. The heirs of a Hindoo in Shahabad (governed by the Mitacshara) being a real and an adopted son, the adopted son takes one-fourth, and the real son takes three-fourths, of his property. Preag Sing *vs.* Ajoodhia Sing. 27th December 1825. 4 Sel. Rep., Cal., p. 96.

85. [An adopted son does not inherit the property left by the father of his adoptive mother. Gunga Mya *vs.* Kissen Kissore Chowdry. 17th December 1821. 3 Sel. Rep., Cal., p. 170.]

86. [An adopted son has an absolute vested interest from date of actual adoption. Bamun Dass Mookerjee *vs.* Tarcenee Dabee 30th Sept. 1850. S. D. A., Cal., p. 533.]

87. An adopted son is liable for the debts contracted by the widow as proprietor of the estate before the adoption, when such debts are contracted under necessity and for the benefit of the estate. Manicmulla Chowdrain *vs.* Parbuttee Chowdrain. 28th April 1859. S. D. A., Cal., p. 515.

88. Where a Hindu has adopted a son, he acquires the rights of a son born in the hereditary immoveable property of the adoptive father; and he cannot be deprived of these

rights by the adoptive father afterwards assuming to adopt a second son, and settling the hereditary property upon such adopted son, coupled with declarations that the first son was disinherited. *Sudanund Mohaputher vs. Bonomalee*. 1 Marshall, p. 317.

89. An adoption of a second son during the lifetime of a previously-adopted son is inoperative.—*Ib.*, p. 317.

90. [*P. D.*, a Hindu, inhabitant of Calcutta, being without male issue, duly adopted two sons, *M. D.*, and *S. D.* simultaneously, giving *M. D.* to his elder wife, and *S. D.* to his younger wife, and died leaving the said wives and adopted sons him surviving, having by his will appointed his wives and his brother his executors, and empowered his wives to adopt another son each, should the son given her die without issue.

The most important part of the will bearing on the distribution of *P. D.*'s property was as follows:—"The residue shall remain as my estate, which shall be received by my two adopted sons in equal shares." The clause in the will conferring the power of adoption was as follows:—"Having adopted two sons, I have given my elder son to my elder wife to bring him up, and my younger son to my younger wife to bring him up, and they both are respectively nurturing the said two sons as sons born of their own womb. If either of these my two sons depart this life without issue, which God forbid, I direct either of my wives, whose foster son shall have died, to take another son in adoption pursuant to this my direction, and having done so, should a similar misfortune happen, she shall have the option of adopting other sons in succession."

*S. D.* died an infant and unmarried, and thereupon *S. S. D.* the second widow adopted *O. D.*

*M. D.* sued for a declaration that the adoption of *O. D.* by *S. S. D.* being invalid by Hindu law, *O. D.* cannot inherit any of *P. D.*'s property; and finally prayed that the plaintiff might be declared the only son and heir of *P. D.*

*Held*, (by Phear, J.) that twin adoption is wholly void as creation of an heir.

That the power of adoption is strictly limited to procuring a substitute for a son (either of the body, or adopted directly, or indirectly), who, if he had existed,

would have prevented the power from arising, and this power always arises when, without its exercise, there would be no one who could perform the adopting father's funeral obsequies. The existence or non-existence of a wife not forming an element in the question.

That a husband cannot confer on his wife a larger power of adoption than he himself, acting under the same circumstances, would possess, and the power of adoption given by the will, and the adoption under it were valid.

That the power of a Hindu of Bengal to dispose, either by deed, *inter vivos*, or by will, of all his property, ancestral or acquired, extends equally to distributions in regard to time and person, and the residue given to the two (supposed) adopted sons was a sufficient designation to support the bequest. Also, that the direction for a substituted adoption, in case either of the first (abortively) adopted sons should die without issue, and for succession to the share of such deceased son, was a valid limitation to the substituted successor of the first (abortively) adopted son.

*Semble*.—Evidence of customary practice, general or local, is receivable. Bourke, p. 189.

The decree dismissing the suit was confirmed on appeal, but upon other reasons. Per Peacock, C. J., and Pundit, J.,—Trevor, J., *dissentient*. 2 *Indian Jurist*, p. 24.]

91 [A sale in execution of a decree against the adoptive mother, not personally but as guardian of her adopted son, and not for a personal debt but for payments made by co-sharers of Government revenue on account of the adopted son to preserve their joint property, is good as against the adopted son, the co-sharers being entitled to look for the money so paid by them to the estate which has benefited by such payments. But satisfactory proof is necessary, the recital in the deed not being sufficient. *Roopmonjooree Chowdrance vs. Ram Loll Sirkar*. 1 W. R., p. 145.]

92. [Acts done by an adoptive mother, done by her as a childless Hindu widow, previous to her acting upon the permission to adopt, which she held from her late husband, do not bind the adopted son. *Ranee Doorgasoondery vs. Ramnauth Dutt*. 13th March 1856. S. D. A., Cal. p. 173.]

93. [In Bengal, where the Dyabhaga prevails, an adopted son succeeds collaterally, as well as lineally, in the family of his adoptive father, that is, to the Agnates or *Sapindas*

of his adopting father. Whether he succeeds to the *Bundhoo* or cognate relation, was not then before the Court. *Lokenath Roy vs. Shamasoonderee*. 30th December 1858. S. D. A., Cal., p. 1863.]

94. [An adopted son is entitled to share collaterally, and the son of an adopted son is entitled to the rights of his father. *Kishennath Roy vs. Hurree Gobindo Roy*. 12th January 1859. S. D. A., Cal. p. 18, and *Gooroopersaud Bose vs. Rashbehary Bose*. 2nd April 1860. 1. S. D. A., Cal., of 1860, p. 411.]

95. [An adopted son represents his adoptive father to whose share he is entitled, and takes the same share with heirs other than the legitimately begotten sons of his adoptive father. *Taramonee Bhuttacharjee vs. Kirpamoyee Dabee*. 9. W. R., page 42 3; 5 Wym., p. 251. See *Sumboochunder Chowdry vs. Narain Debi*. 3 Kanpp., p. 55; or 5 W. R., p. 100., P. C. Rulings.

96. The adoptee loses all interest and title in the property of his natural family. *Appaniengar vs. Alemaloo Ammal*. M. S. D. A. 1858, p. 5.

97. Under the Hindu law, an adopted son forfeits all right of inheritance in his natural family. *Oonamalla Auchy vs. Mungalam*. M. S. D. A. 1859, p. 81.

98. If an adopted son die without issue, the property of the adopter goes, at his death, to his natural heirs. *Sabramanyah vs. Parvati Ammal*. M. S. D. A. 1859, p. 265.

99. [On the death of a son adopted by a Hindu as the son of one of his two wives, the property descends not to the other wife, but to the next legal heir. The adopted son is a son to both adopting father and mother, that is, to the mother as whose adopted son he is taken. *Kasheesure Dabee vs. Grees Chunder Lahooree*. Suth. Rep., p. 71.]

100. [An adopted son does not succeed to his maternal grandfather's estate when there are collateral male heirs. *Moran Mull Dabeeh vs. Bejoy Kisto Gossamee*. S. N. W. R., p. 121.]

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### *Effects and rights under other forms of adoption.*

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#### KURTA PUTRO.

101. The adoption of an only son as a Kurta Putro is not illegal under Hindoo law. *Mussamut Tikday, alias Meharanee, vs. Lalla Heeraloll*. Suth. Rep., p. 133.

## PALUCK PUTRO.

102. [The Hindoo law does not allow the adoption of a Paluck Putro. *Kalee Chunder Chowdry vs. Seeb Chunder*. 2 W. R., p. 281.]

## KRITRIMA.

103. Under the Hindu law as current in Mithila, a Hindu widow has power to adopt a son in the *Kritima* form with or without her husband's consent. But such son would not lose his position in his own family, or succeed to the property left by the husband of the adoptive mother, but would be considered her son, and entitled to succeed to her only. *The Collector of Tirhoot, &c., vs. Huopersaud Mahata*. 7 W. R., p. 300; Wym., p. 51.

104. Adoption in the *Kritima* form in the Mithila province does not give collateral heirship, the relation of *Kritima* for purposes of inheritance extending to the contracting parties only. A *Kritima* adopted son, when adopted by a widow, with or without the authority of her husband, cannot, in any case, succeed to more than his adoptive mother's property, and has no claim to that of collaterals. *Mussamut Shibo Koeroo vs. Jogun Sing*. 8 W. R. p. 155; 4 Wym. p. 121.

105. The agreement of both parties constitute an adoption in the *Kritrima* form valid. *Durgopal Sing vs. Roopun Sing*. 3rd September 1839. 6 Sel. Rep., Cal., p. 271.

The adoption of a sister's son according to the *Kritrima* form, is legal. *Chowdry Purmessur Dutt Jha vs. Hunooman Dutt Ray*. 18th December 1837. 6 Sel. Rep., Cal., p. 192.

106. An adopted son under the *Kritrima* form takes the inheritance both of his own family and in that of his adopting parents. *Mussamut Deepoo vs. Goureesunkur*. 23rd February 1824. 3 Sel. Rep., Cal., p. 410.

## DWYAMUSHYAYANA.

107. The adoption of an only son is invalid unless the natural father delivers his son to the adoptive father, on condition that he should belong to them both as a son, and the latter adopt him on that condition. *Raja Shumshere Mull vs. Ranees Dilraj Konwur*. 31st January 1816. 2 Sel. Rep., Cal., p. 216.

## PUTRIKA PUTRA.

108. A sister's daughter cannot become an adopted daughter or her son putrika putra, nor is the adoption of a putrika putra valid in the present day. Nursing Narain *vs.* Bhutton Loll. Suth. Rep., p. 1941.

109. The adoption of the daughter of a brother, with the condition that her eldest son shall be "Putrica Putra" (son of a daughter) of the adopted, is legal. But it is essential to the validities of the adoption that it take place previous to her marriage. Nowul Rai *vs.* Bhugawuttee Coowur. 6th January 1835. 6 Sel. Rep., Cal., p. 5.

## ADOPTION BY PURCHASE.

110. Adoption by means of purchase is obsolete in the present (the *kali*) age, unless on the ground of local usage and custom. Guroomull *vs.* Mooncesamy. Cited in the goods Annava Chingleroy Moodeliar. 1 Str. N. M. C., p. 71.

111. See Yechereddy Chinna Bassapa *vs.* Yechereddy Gowdapa. Suth. P. C. cases, p. 41.

## MANASU PUTRO.

See "Gift," 10.

See "Limitation," 2, 4, 11, 14.

## ALIENATION.

1. *By a Father.*
2. *By a Guardian.*
3. *By a Co-parcener.*
4. *By a Widow.*
5. *By a son.*
6. *By a daughter.*
7. *By an heir.*
8. *By an uncle.*
9. *Of endowed property.*
10. *For legal necessity.*
11. *Valuation of claim.*

1.—*By a Father.*

1. A father is not incompetent to sell immoveable property acquired by himself. Muden Copaul Thackoor *vs.* Rambuksh Paurah. Sevestre Con. Mar., p. 472.

2. Sale by a father of ancestral immoveable property without the concurrence of his son, is not necessarily void, though it may be avoided, unless the purchaser can show that it was made during a season of distress, or for the sake of the family, or for pious purposes.—*Ibid.*

3. A son or grandson's right of prohibition to his unseparated father making a gift, donation, or sale of effects inherited from his grandfather cannot be exercised in favor of an unborn son. *Mussamut Goura Chowdrain vs. Chummun Chowdry.* Suth. Rep., p. 340.

4. A son's power to prevent alienations by the father extends to acts of waste, and not to alienations for payment of joint family debts, and for the maintenance of the family. *Bissumbhur Naik vs. Sudaseeb Mohaputtur.* 1 W. R., p. 96.

5. A son may sue to obtain a declaration that the sales by the father are as against him void and inoperative. *Kanth Narain Sing vs. Prem Lall Pauray.* 3 W. R., p. 102.

6. In a suit by a son to annul an alienation of ancestral property by his father, the *onus* is not on the son to prove the absence of necessity for the sale, but on the purchaser to prove the existence of the necessity. When the necessity is shown, it is not for the lender to see to the application of his money, nor can his title be vitiated even if the borrower wastes the loan, and neglects to appropriate it to the purpose for which it was borrowed. *Jugdel Narain Suhaye vs. Lalla Ramperkash.* 2 W. R., p. 292.

7. A father may give a small part of the ancestral estate for a pious purpose without consent of sons, *Gopaul Chunder Pande vs. Babu Koonwur Sing.* 3rd April 1830. 5 Sel. Rep., Cal., p. 24.

8. *A.* died leaving a widow *B.*, who succeeded to his property. On *B.*'s death *A.*'s brother *C.*, succeeded to the property, and alienated a portion thereof. *C.*'s son sued on the ground that the property was ancestral, and therefore *C.* had no right to alienate. *Held*, that the Shastras are prohibitory of the alienation of ancestral property by a Hindu father without the consent of his son as heir to such property. *Gourpersaud vs. Ramgolam.* 23rd May 1845. S. D. A., Cal., p. 175.

9. Where a mortgage had been effected by a Hindu father in a district governed by the Mitakshara law, for the purpose of saving the estate from sale for arrears of



revenue. *Held*, on the precedent of the case of Hunoomanpersaud Panday (vi., Moore I. A., p. 393), that as the mortgagee appeared to have acted in good faith, and had lent the money to prevent a former mortgage from being foreclosed, his mortgage was a good and a valid one. Deotaree Mohapattur *vs.* Damoodur Mohapattur. 28th December 1859. S. D. A., Cal., p. 1643.

10. An alienation made by a Hindu with the consent of his son cannot be questioned by his grandson. Buraik Chutter Sing *vs.* Greedharee Sing. 9 W. R., p. 337.

11. A son is entitled to recover from a purchaser from his father's ancestral property improperly sold by the father, and in the absense of proof of circumstances which would give the purchaser an equitable right to compel a refund from the son, the latter would be entitled to recover without refunding any part of the purchase-money.

But if it is proved that the son got the benefit of his share of the purchase-money, the son must refund his share of the purchase-money before he can recover his share of the property sold. And where the purchase-money has been applied to pay off a valid incumbrance on the estate, the right of the son to recover will be subject to that of the purchaser to stand in the place of the incumbrancer.

The *onus* in such cases to prove the application of the purchase-money lies on the purchaser. Modhoo Dyal Sing *vs.* Golbur Sing. 9 W. R., p. 511. Full Bench Ruling.

12. A son, whatever right he may possess during his father's lifetime, may, within twelve years from his father's death, sue to recover ancestral property improperly alienated by the father. Baboo Dabcepertab Narain Sing *vs.* Monohur Doss. Suth. Rep., p. 96.

13. A suit by a son to set aside alienations by his father must be brought within twelve years from the date of the alienation, or within twelve years from the date of the son attaining majority, supposing the alienations to have been made during his minority. Beer Pershad *vs.* Doorga Pershad. Suth. Rep., p. 215.

14. In the absence of evidence to the contrary, it must be assumed that the price received by the father became a part of the assets of the joint family, and therefore, if the son seeks the aid of the Court to set aside the purchase, he must do equity, and offer to repay the purchase-money

unless he can show that no part of such purchase-money or the produce of it, has ever come to his hands. *Muddun Gopaul Thakoor vs. Rambuksh Pandey*. 6 W. R., p. 71. See *Muddun Gopaul Thakoor vs. Rambuksh Pandey*. 6 W. R., p. 74, sequel to the above case.

15. A sale by a father is valid by Hindu law to the extent of his own share of the undivided estate. There is no distinction, according to the Madras School, between a father and other co-parceners. *Balanivelappa Kaundan vs. Maannaru Naikan*. 2 Stokes, p. 416.

16. When ancestral property is sold by the father, and the son sued to cancel the sale, and oust the purchaser therefrom, the son is entitled to sue for cancelment of such sale, and the decree should not be in the term declaring that the property is ancestral, and will pass to the father's heirs on his death, but a decree, cancelling the sale, so far as it obstructs him in asserting his right, and, in effect, declaring the sale to be invalid, without interfering with the actual possession that may have been obtained by the purchaser. *Babooram and others vs. Gujadhur Sing*. 25th March 1867. F. B. Rulings. H. C. N. W. P., Part 2, p. 67

17. A common ancestor having had sons, has no power to assign away any of the ancestral property to one who had no title to inherit, even though the assignment might have been absolute. *Tandaveraya Gounden vs. Tandavaraya Gounden*. M. S. D. A. 1859, p. 40.

18. A male Hindu is only controllable in the disposition of divided ancestral property by his son's son's sons or son's grandsons. *Mussanut Gondhee vs. Hanuman Sing* 12th May 1868. S. D. A., N. W. P., p. 175.

19. Under the Mithila Law, the father of a Hindu family cannot give Mukurrurri Lease of land, at a nominal rent, as a reward for faithful service, when his children, being infants, do not consent to such a grant. *Pertabnarain Das vs. the Court of Wards*, 3 B. L. R., A. C., p. 21.

## 2.—By a Guardian.

20. Sale of part of a minor's inheritance without legal necessity is invalid under the Hindu law. *Moneyan vs. Moneyrawney Moodolly*. M. S. D. A. 1858, p. 104.

21. The mother of two minor children conditionally sold her husband's estate for the purpose of paying off his debts. In the absence of proof of the necessity for the alienation

the sale was illegal. *Sheo Sehai vs. Bunyad Sing.* 10th December 1838. 6 Sel. Rep., Cal., p. 244.

### 3. *By a Co-parcener.*

22. *A., B., C.* were sons of brothers and tenants in common of some ancestral lands. *A.*, several years before death by deed, gave his general estate to *D.*, his sister's son, and had his name recorded. On suit by *B.* and *C.* after *A.*'s death for *A.*'s share in the land. *Held*, that the gift was illegal, as the property was undivided. *Jivan Lall Singh vs. Ramgovind Sing.* 24th January 1832. 5 Sel. Rep., Cal., p. 163.

23. The manager of an undivided Hindu family, if acting in his individual capacity, can sell his own share of the family property only. *Damodur Vithul Khare vs. Damodur Hari Somuna.* 1 B. H. C. Rep., p. 182.

24. A conveyance or transfer of joint property by one member of a family is illegal without the consent of other members. *Lewis Cosserat vs. Sudaburt Pershad Sahoo.* 3 W. R., p. 210.

25. According to the Mithila law, a sale made by an adult member of a joint Hindu family, without the consent of all the heirs, is void when it was made without legal necessity, and not for the benefit of the minors. *Sheopersaud Sha vs. Gungaram Sha.* 5 W. R., p. 221.

26. *Held*, in the case of two brothers who lived separate, but were undivided in interests, that the sale of a portion of the family property by one of them, without the consent of the other, was null and void by Hindu law. *Bajee Sudshet vs. Pandoorung Ram Chunder.* 15th May 1849. S. D. A., Bom., p. 93.

27. A younger brother is incompetent to mortgage an undivided estate without the consent of the elder. *Ballojee Bappojee vs. Venkapa Newada.* Sel. Rep., S. D. A., Bom., p. 243.

28. Although there has been no actual partition by metes and bounds, a co-parcener holding an ascertained share in immoveable property is competent to alienate it, without the consent of the other co-parceners. *Hurdwar Sing vs. Luchmun Sing.* H. C. N. W., P., Vol. 4, p. 42.

29. The managing member may sell part of the ancestral estate to provide for the necessities of the family. *Ramiah vs. Kantaya.* M. S. D. A., 1859, p. 142.

30. An undivided member of a Hindu family cannot sell a portion of the ancestral property unless driven thereto by pressing necessity. *Ramakutti vs. Kalathur Syan*, M. S. D. A. 1859, p. 270. See "Undivided Hindu family."

4.—*By a Widow.*

31. [A Hindu widow may only sell for her maintenance, when the property, *ab initio*, is of such a nature that without a sale she could not maintain herself. *Doe dem. Raj Chunder Paramanick vs. Bullo Ram Biswas*. 1 Fulton, p. 133.]

32. *Held*, that a conveyance by a Hindoo widow for other than allowable purposes is void ; but the reversioners are not entitled to immediate possession unless the alienation is of a nature involving forfeiture of the property. *Held*, also, that a sale on the unfounded and wilfully false statement that it is in discharge of a husband's debts, was in fraud of the reversioners, and an act of waste entitling them to possession, but subject to a suitable maintenance to the widow. *Mussamut Mowla Koowar vs. Chatterkey*. December. S. D. A. N. W. P. 1865, p. 159.

33. The widow of a Hindu having sold a portion of a family residence, her daughter-in-law instituted an action to cancel the sale, on the plea that she was heiress to the property in right of her deceased husband. The mother-in-law contended, however, that the said daughter-in-law had lost all right in consequence of her son (the daughter-in-law's deceased husband) having predeceased his father. When the case was tried, the Moonsiff held that the widow of a son has a right to succeed to the property of the father of her husband, but the Zillah Judge decided that, in the case of a Hindu dying without male issue, his property descends to his widow. The case then coming before the Sudder Dewanee Adawlut, it was determined that the sale was invalid as not having been made with the consent of the son's widow. *Bace Amrut vs. Bace Koosul*. 9th February 1849. S. D. A., Bom, p. 5.

34. A Hindu widow cannot, under any circumstances, alienate the whole landed estate devolved on her by the death of her husband, nor can she alienate a part (except under special circumstances) without the consent of all the husband's heirs, notwithstanding she may have obtained the consent of the nearest heirs ; and a deed of

gift executed by her in favor of a stranger to be valid must be attested by all her husband's heirs as consenting parties. *Mohun Lall Khan vs. Ranee Siroomunnee*. 31st August 1812. 2 Sel. Rep., Cal., p. 41.

35. A lease granted by a childless widow is valid, and inures for the life of the widow. *Mussamut Mohan Koowar vs. Baboo Zoramun Sing*. 1 Marshall, p. 166.

36. Acts of a Hindu widow allowed to stand good during her lifetime. *Durgah Roy vs. Mussamut Emeranee Koer*. Sevestre Con. March, p. 60.

37. A conditional sale is an alienation, the validity of which a reversioner to a Hindoo widow is, under the Hindoo law, entitled to question. *Oditnarain Sing vs. Dhurm Mahtoon*. Suth. Rep., p. 263.

38. The consent of all the reversioners is necessary to make a sale by a childless Hindu widow valid in law, but the purchaser is entitled to hold the property during the widow's lifetime. Only immediate reversioners are entitled to impeach the sale by a widow. *Mussamut Radba vs. Mussamut Koer*. Suth. Rep., p. 148.

39. [The consent of all the reversionary heirs living at the time of the execution of a conveyance by a Hindoo widow, either directly or by attestation, is requisite to make a sale binding against the reversioners. *Kartic Urmokar vs. Dhunno Monee Goopto*. Suth. Rep., p. 268.]

40. A widow has no power to dispose of by will of immoveable property inherited by her from her husband. The word "inherited" used in the *Mitackshara* in regard to a woman's *Streedhun*, does not include immoveable property, so as to make it her peculium, but refers only to personal property over which alone she has an absolute dominion. *Goburdhun Nath vs. Onoop Roy*. 3 W. R., p. 105.

41. Alienation by a widow of her husband's estate, except for his spiritual benefit, is illegal. *Joi Ram Dhami vs. Musan Dhami*. 30th January 1830. 5 Sel. Rep., Cal., p. 3.

42. A sale by a widow to her daughter's sons of joint property derived from her husband is invalid. (*See note*.) *Sheoburt Sing vs. Mussamut Ghoosa*. 10th March 1836. 6 Sel. Rep., Cal., 60. p.

43. Mortgage by a widow of her late husband's house to one of his creditors held good against another creditor of her husband holding a decree of a date subsequent to the mortgage. *Oottumram vs. Hurgovindas*, 2 Borr., p. 127.

44. *A.* died leaving *B.*, a grandson by a son deceased, *C.*, the widow of another son deceased, and *D.* and *E.* sons him surviving. All four held separate possession of their respective shares in the estate: *C.* sold her share for Rs. 995 to pay off a debt of *A.*'s, of Rs. 670. *D.* and *E.* having waived their rights, *B.* sued as reversioner to set aside the sale made by *C.* *Held*, that *C.* did no wrong in selling her share to pay off the debt, and the mere fact that she sold it for more than the amount of the debt, did not render the sale invalid. *Lala Chatranarayan vs. Uba Kunwari.* 1 B. L. R., A. C., p. 201.

5.—*By a Son.*

45. An alienation by a son without the father's consent is invalid. *Sheo Rutton Koonwur vs. Gour Beharee Bhukkut.* 7 W. R., p. 449.

6.—*By a Daughter.*

46. A daughter has no power to alienate by gift her ancestral property to the detriment of other heirs of her father. *Mussamut Gyan Koowur vs. Dookhuru Sing.* 3rd February 1829. 4 Sel. Rep. Cal., p. 330.

7.—*By an Heir.*

47. *Held*, that possession is not necessary, according to the shastras, to the validity of a sale, and that property not being tied up by a decree until attached, and such decree not being against the said property, specially the sale thereof, is not affected by the fact of some of the vendor's father's debts being at its date unliquidated. *Sunhussapa Nin Chinbussapa Dhoolikopode vs. Moodkapa Ruddy.* 23rd September 1861. 8. S. D. A., Bom., p. 235.

8.—*By an Uncle.*

48. The consent of the nephews to a sale by their uncle of ancestral property is not requisite according to the *Mitakshara*, or the law as current in the *Mithila*. The consent of the sons and grandsons is alone necessary to the sale by the father of ancestral property. The principle of the distinction, as stated in the *Mitakshara*, is that a son has an inchoate right in the possession of his father from the time of his birth, whereas a nephew has no right at all in the ancestral property in the possession of his uncle until after the death of the latter. *Gopal Dutt*

Pandey *vs.* Gopal Lall Misser. 17th September 1859. S. D. A., Cal., p. 1314.

49. *Held*, that a nephew is not competent by Hindu law to object to any alienation of ancestral property directly or indirectly made by his uncle. Gungadur Ruwut *vs.* Madoo Chunder and others. H. C., N. W. P., Vol. 4, p. 4.

#### 9.—*Of endowed property.*

50. Alienation of the property attached to an endowment, as if it were private property, is illegal. Mohunt Gopaul Doss *vs.* Mohunt Kerparam Doss. 3rd June 1850. S. D. A., Cal., p. 250.

51. [A mere nominal endowment does not prevent alienation. Juddonath Burrall *vs.* Kalicoomar Ghose. 27th April 1852. S. D. A., Cal., p. 331.]

52. Alienation of a *mundeer* by one out of six chellas of a Byragee Gooroo, declared illegal without concurrence of all. Gopauldas Kishendas *vs.* Damodur. 1 Borr., p. 439.

#### 10.—*For legal necessity.*

53. [Alienation of property to defray expenses of a suit held not to be illegal. Nuwab Nazim *vs.* Juddonath Burrall, and Kalikissen Ghose *vs.* Juddonath Burrall. 27th April 1852. S. D. A., Cal., p. 311.]

54. [Alienation (transfer by mortgage) made to clear off old debts, and pay for a marriage, was held to have been made under sufficient urgent necessity. Hurnath Roy Chowdry *vs.* Indur Chunder Chowdry. 26th February 1859. S. D. A., Cal., p. 207.]

55. The existence of a decree against the father is not sufficient evidence of the necessity for his selling his son's interest in ancestral property. Kantoo Lall *vs.* Greedharee Lall. 9 W. R., p. 469.

56. *Held*, on a question of the necessity of the sale of the ancestral property under the Mitakshara law, that the only proof of necessity was the recital in a byanamah of a debt of Rs. 1,000 to a *zur-i-peshgeedar*, which was to be paid by plaintiff if they wished to complete the sale, and their vendor failed to execute the conveyance. *Held*, that the terms of this deed showed no such pressing necessity of payment on demand.

*Held*, further, that only so much of the property should be sold as is sufficient to meet the claim, and that where

the whole of the estate, or a larger portion than absolutely required for this purpose, is sold, it must be shown by the purchaser, to the satisfaction of the Court, that the money required to pay off the claim could not be raised otherwise. *Daboe Persaud vs. Ameerut Misser*. 13th May 1861. 1 S. D. A., Cal., p. 193.

### 11.—*Valuation of Claim.*

57. Where a plaintiff only sues for declaration of his title to certain lands on reversal of the Kohalas said to have been illegally excuted by his father, he need not be compelled to value the case at the total of the consideration mentioned in those deeds. *Shco Golam Sing vs. Bejoyram Pertab Sing*. Suth. Rep., p. 317.

*See "Reversioners" 2, 3, 4, post.*

*See "Son," post.*

*See "Limitation" 5, 6, 7, 10, post.*

### ANCESTRAL PROPERTY.

*See "Property."*

### ASCETIC.

1. An ascetic, a mere life-tenant, cannot alter the succession to an endowment belonging to ascetics by an act of his own in connection with the *status* under which he originally acquired the trust. *Mohunt Rumun Doss vs. Mohunt Ashbul Doss*. 1 W. R., p. 160.

### BANDHUS.

1. The enumeration of Bandhus, or cognate kindred given in *Mitakshara* Chap. I., section 6, art. I., is not exhaustive. The maternal uncle and the father's maternal uncle will take as heirs in preference to the Crown.

In a suit by the Crown claiming lands as an escheat, which are admittedly in the possession of the party claiming as heir, the *onus* is on the Crown to show that the last proprietor died without heirs. It is open to the defendant in such a suit to set up any *jus tertii* to bar the claim of the Crown. *Giridhari Lal Roy vs. The Government of Bengal*. B. L. R., P. C., p. 44.



## BROTHER.

*See* "Property," *post*.

*See* "Conversion," 2, *post*.

*See* "Inheritance."

*See* "Undivided Hindoo Family," *post*.

*See* "Alienation," 18, 22, 23, *ante*.

*See* "Guardian and Ward," 3, *post*.

## BROTHER'S SONS.

1. [Brother's sons are heirs in preference to brother's son's son. *Larmourcu vs. Tripoora Soondaree Dossee*. 3rd May 1859. S. D. A., Cal., p. 569.]

*See* "Adoption," *ante*.

*See* "Alienation," *ante*.

*See* "Inheritance," *post*.

*See* "Property," *post*.

*See* "Guardian and Ward," 4, *ante*.

## BROTHER'S DAUGHTER.

1. A brother's daughter is not enumerated in the order of heirs as given in the *Mitakshara*. *Mussamut Jogmurut Kour vs. Baboo Seetul Persaud Singh*. *Sevestre Con. Marshall*, p. 433.

*See* "Adoption."

## BROTHER'S DAUGHTER'S SON.

*See* "Inheritance."

## BYRAGEES.

1. Byragees are not excluded from inheritance. *Teeluck Chunder vs. Shamachurn Prokas*. 1 W. R., p. 209.

2. A Hindu becoming a Byragee, if he chooses to retain possession of, or to assert his right to, the property to which he is entitled, may be doing an act which is morally wrong, but in which he will not be restrained by the Courts. *Jagaunath Pal vs. Bidyanand*. 1 B. L. R., A. C., p. 114.

3. A Byragee is not necessarily such a religious devotee that his goods are inherited by his pupil in the event of intestacy.

*Semble*.—The goods of a *Yati* are inherited by his *Syshia* and not by his *chelah*. *Govind Dass vs. Ramsahoy Jemadar*. 1 Fulton, p. 217.

4. A party becoming a Byragee (but mingling in wordly affairs) was held not to have become an ascetic to such an extent as to exclude his adopted son from succeeding to his property. *Mohunt Modhobun Dass vs. Hurry Kissen Bhunj.* S. D. A., Cal. 9th December 1852, p. 1089.

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CASTE.

1. Suit by a Sravuk Beesa Ooswul Bunyun for recovery of damages, on the allegation that the defendants had wilfully and maliciously caused the loss of his character by omitting to invite him in a solemn feast of the caste, was decreed, and damages awarded. *Dhurum Chund Abeela vs. Nanabhaee Goolalchund.* 1 Borr., p. 13, (see *Hurruk Chund Moteechund vs. Khoosalchund Goolabchund.* 1 Borr., p. 38).

2. Expulsion of a member of the *Lohar* caste for marrying second wife without consent of his first, affirmed. *Rugoonath Jetha vs. Poorshootum Sunker.* 1 Borr., p. 440.

3. Expulsion from caste (of Rajpoots), for neglect of ceremonies affirmed. *Ghelajee Nanabhaee vs. Umarsing.* 1 Borr., p. 430.

*See "Divorce,"* 1 to 6.

*See Dowsr,* 1.

*See Escheat,* 1.

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CHELLA.

*See "Byragee."*

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CHILD.

*See "Parent and child."*

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CONVERSION.

1. Upon the conversion of a Hindu to Christianity, the Hindu law ceases to have any continuing obligatory force upon the convert. *Abraham vs. Abraham.* 9 M. I. A., p. 195.

2. The natural son of a European by a Hindu mother, adhering to the religious persuasion of his mother, is subject to Hindu law; and he and his brothers being undivided, his share goes on his death to the surviving brothers, and not to his widow. *Landy Boyummal vs. Peyaree.* M. S. D. A., 1858, p. 125.

3. A Hindu member of an undivided family having become Mohamedan, separated and took with him certain property, and there being no proof that his general property was left in the family, it was held that his son who remained in the family did not take his father's share in the general family property as it stood at a long subsequent date. But the son was held entitled to claim his own personal share in the earnings of the family, not an equal share, but a share in proportion to his actual earnings. Having failed to show that any balance was due to him on that account, he was still held to have a customary right to maintenance. *Rajah Beharee Lall vs. Rajah Tej Kishen* 5th August 1862, part 1. Oudh Sel. Civ. Cases, p. 112.

4. Before the passing of Act XXI. of 1850, the property possessed or acquired by a Hindu convert to Mahomedanism, prior to his conversion, past to his nearest heir professing the Hindu religion. *Rance Mewa Koonwur vs. Oudh Beharee Lall*. H. C., N. W. P., vol. III., p. 311.

5. An agreement made between the members of a family for the settlement of their disputes, was not to be regarded as conferring a new and distinct title upon the several members, but as recognising previously-asserted rights, and the Courts were bound to give effect to it. *Oudh Beharee Lall vs. Mewokur*. H. C., N. W. P., vol. IV., p. 82.

6. When a person becomes convert, his property is under Hindu law forfeited to his son, the mere omission by son to enter upon the property vested in him by forfeiture, or otherwise to assert his right to it, would not revert it in the convert, and make it descendible to his heirs.

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#### CONVEYANCE.

1. By the Hindu law no words of inheritance are necessary to pass the freehold of land to the heirs.

A freehold estate cannot be created by parol or informal written instrument. *Sreemutty Annundmoye Dossee vs. John Doe*, on the demise of the East India Company. 8 M. I. A., p. 43.

2. By the Hindu law a verbal grant of real estate is good, if followed by possession by the grantee. *Doe dem Rajah Seebkristo vs. The East Indian Company*. 6 M. I. A., p. 267.

## CO-PARCENE RS.

1. An estate cannot be burdened with the debts of one of its joint owners after that person's decease. *Lewis Cosserat vs. Sudaburt Pershad Sahoo*. 3 W. R., p. 210.

2. [The sole manager of the joint stock of a joint Hindu family, supposing that joint stock to be augmented by his sole exertions, is not entitled to a double share of the amount of the augmentation for his trouble.

The acquisition of a distinct property by a member of a joint Hindu family, without the aid of the joint funds or of joint labor, gives a separate right, and creates a separate estate.

The acquisition of a distinct property, with the aid of joint funds and joint labor, gives the acquirer a right to a double share thereof.

The union with the joint fund of that which might otherwise have been held in severalty, gives it the character of a joint, and not of a separate property. *Gooroochurn Doss vs. Goluckmoney Dossee*. 1 Fulton, 164.]

3. Disputes having arisen among the brothers of an undivided Hindu family, and owners of land, certain agreements were entered into between them, by which their interests and liabilities were declared, and the matters in dispute referred to arbitration. A decree having been obtained by a creditor named in the agreements against one member only of the family, and the debt recovered from him alone, it was decided by the Courts, and affirmed on appeal, that the other parties were liable to be called upon to contribute in respect of their several shares. *Domun Sing vs. Kaseeram*. 1 M. I. A., p. 366.

4. The general rule that the possession of one member of a joint Hindu family is the possession of all other members, does not apply where the party claiming has been clearly excluded from the family. *Jowala Buksh vs. Dhurm Sing*. 10 M. I. A., p. 511.

5. The presumption of the Hindu law is that the whole of the property of an undivided Hindu family is in co-parcenary. The *onus* lies on a member of such family to prove that it was separately acquired. *Dhurm Doss Pandey vs. Mussumat Shama Soondri Dibiah*. 3 M. I. A., p. 229.

6. In a suit for the division of the property of an undivided Hindu family, the whole of the property of each individual is presumed to belong to the common stock, and

it lies upon the party who wishes to except any of it from the division to prove that it comes within one of the exceptions recognized by Hindu law. *Luximon Row Sadasew vs. Mullar Row Bajee*. 2 Knapp, p. 60.

Where a widow sued to recover from the brothers of her deceased husband a share of property which remained undivided at his death, a division of part of the family property having taken place during the lifetime of the husband. *Held*, that the plaintiff had no right to recover the property which was actually undivided at the death of her husband. The doctrine propounded in Section 291 of *Strange's Manual of Hindu law* dissented from. *Timmy Reddy vs. Achama*. 2 Stokes, p. 325.

7. *D.*, one of five brothers constituting an undivided Hindu family, but having no ancestral estate, acquired personal property, with which, with the aid of his brothers, he established and carried on a banking business at five different places. Such circumstances, under the general principles of Hindu law, held to constitute a joint family property in which the brothers were entitled to share.

The burden of proof that such was only an ordinary partnership, and not a jointly-acquired family property, lies on the party claiming it to have been separately acquired.

Ordinary co-partnership property is not subject to the rule of Hindu law, which excludes a widow from the succession at her husband's death to a share of the joint property of an undivided family. *Rampersaud Tewary vs. Sheo Churn Doss*. 10 M. I. A., p. 490.

Undivided brothers are jointly liable for a joint debt. *Shaik Mooroot Saib vs. Chettumbumm Chutty*. M. S. N 1858, p. 255.

*See "Alienation" 18, 19, 20, 21, 22, 23, 24, 25.*

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#### DAUGHTER.

1. *Held*, that, as between two married daughters, the circumstance of one having a son is no qualification on this side of India, giving the married daughter having a son a superior claim to inheritance of her parent's property over the married daughter not having a son; such priority of claim depending on the several daughters, being respectively endowed (*sadhan*) or unendowed (*nirdhan*), the unendowed daughter has the preference.

*Semble*.—A daughter who becomes incurably blind in her infancy has no right to inheritance, but only to maintenance. *Bakúbái vs. Manchhábái*. 2 B. H. C. Rep., p. 5.

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DAUGHTER'S SON.

*See* "Property."

*See* "Alienation" 42.

*See* "Inheritance."

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DAUGHTER'S SON'S SONS.

*See* "Inheritance."

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DISAPPEARANCE.

1. [The time allowed for the re-appearance of a missing person is twelve years, after which his death is to be presumed. *Ramlochun Piridhan vs. Hurchunder Chowdree*. 6 Sel. Rep., Cal., p. 98, 13th August 1836.]

2. [Where a Hindu disappears and is not heard of, for a length of time, no person can succeed to his property as heir until the expiry of twelve years from the date on which he was last heard of. *Janmajoy Mazumdar vs. Keshab Lall Ghose*. 2 B. L. R. A. C., p. 134.]

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DIVORCE.

1. Divorce permitted to a wife of the Kunsara caste according to the rules of the caste, in case of ill-treatment. *Kaseram Kriparam vs. Umbaram Hurree Chund*. 1 Borr., p. 429.

2. Claim by a wife of the Gundurva caste for a divorce from her husband on repudiation of his second wife. Divorce granted. *Mohashunkur Khoosal vs. His wife Ootum*. 1 Borr., p. 572.

3. Divorce amongst the Koombee caste depends on the husband's pleasure. *Hurree Bhaee Nanna vs. Nuthoo Koobeer*. 1 Borr., p. 65.

4. A father cannot claim divorce for his daughter.—*Ibid*.

5. Amongst the Dusa Morh Maduliyu Bunyan caste, contracts for marriage can be set aside in cases of personal deformity in females, and impotence in males. *Mussamut Ruliyat vs. Madhowjee Panachund*. 2 Borr., p. 739.

6. Divorce granted to a woman of the Wulun caste on account of her husband's dissolute and bad character. 1 Borr., p. 452.

## DOWER.

1. The right to retain possession of her *Pulla* or dower jewels, does not accrue to a Brahmin woman until she attains her thirtieth year. *Jebha Lukshmee vs. Annundram Govindram*. 1 Borr., p. 128.

2. A woman has a right to retain possession of her dower jewels. *Muyaram Rajaram vs. Govind Ruttonjee*. 2 Borr., p. 270.

3. Right inherent in a woman to employ her dower for her own use without being subject to control of relations, so long as she spends it in a reasonable manner. *Doolubdas Brijbhokundas vs. Larkoonwur*. 1 Borr., p. 466.

4. *A.*, the stepfather of *B.*, marries *B.* to *C.*, and gives her *C.* a dower. *B.* dies, and *C.* wishes to contract a second marriage. Ruled, that *A.* by *Shastras*, can make no demand for restitution of the dower given by him to *C.*, nor prohibit her from contracting a second marriage. *Bace Rutton vs. Lalla Munnohur*. 4th March 1848. S. D. A., Bom., p. 86.

## DWMUSUAYANA.

See "Adoption."

## ENDOWMENT.

1. [A Hindu widow cannot endow an idol with her husband's property, or a portion thereof, to the detriment of the reversioners. *Kartic Chunder Chuckurbutty vs. Gourmohun Roy*. 1 W. R., p. 48.]

2. [Each of the members of a Hindu family having possession of endowed property for the service of a family idol is bound to supply his quota of expenses for that service in proportion to his share, and that where one or more of their co-sharers, to maintain the whole worship of the idol, such co-sharer is entitled to recover from the defaulting members. *Judoonundun Burrul vs. Kalee Doss Dhur*. 21st August. 2 Cal. S. D. A. of 1860, p. 140.]

3. The Adhenakurthier of a pagoda (manager of a Math) has the power of nominating his successor. *Soobramaneya Pandarum vs. Aroomooga Thumberan*. M. S. D. A., 1858, p. 33.

4. A female can, by means of a fitting deputy, discharge the office of Lelay, or personation of the deity, and hold the *Meerassee*, under Hindu law, unless local custom

may prevail to disqualify her. *Moottoo Meenachy Ummal vs. Villoo Bhutter.* M. S. D. A, 1858, p. 136.

See "Alienation," 44, 45, 46.

See "Ascetic."

See "Mohunt."

#### ESCHEAT.

1. The estate of a Hindu of the Brahmin caste dying without heirs escheats to the Crown as the sovereign power in British India. An estate taken in escheat is subject to the trusts and charges, if any, previously affecting the estate.

*Semble.*—There is no distinction in this respect between sacerdotal Brahmins and the ordinary members of a caste.

Where the Crown takes by escheat for want of heirs, it has the same right to impeach an unauthorized alienation by the widow, which the heirs of husband, had there been any, would have had. *The Collector of Musulipatam vs. Cavaly Vencata Narainapah.* 8 M. I. A., p. 500.

For judgment of the S. D. A. Madras, See *Cavali Vencata Naranapah vs. Collector of Masulipatam.* M. S. D. A., 1858, p. 99.

2. A. dies leaving a widow and their two sons, C. and D., who inherit his estate. C. dies, and his widow succeeds to his moiety. D. dies, and this mother succeeds to his moiety, which, on the death of the mother, is vested in the Crown to the exclusion of the other son's widow. *Jushoodah Raur vs. Juggernaut Takoor.* Montriou, C. H. L., p. 545.

See "Bandhus."

#### EXCLUSION FROM INHERITANCE.

1. Dumbness, if from birth, is a cause of disinherison in females as well as in males.

A Hindu widow born dumb is, according to the law prevailing on this side of India, incapable of inheriting from her husband.

Such widow is, however, entitled to her *Stridhun*, and to maintenance out of the property of her deceased husband.

Case remanded to have the widow made a party to the suit, that it might be determined whether she was born dumb, and if so, that the amount of her *stridhun* and of



her maintenance might be ascertained. *Vallabharam, Shivnay vs. Bai Harigangá*. 4 B H. C. Reps. A. C. J., p. 135.

2. [Where incapacity to inherit by reason of decease is alleged, the strictest proof of the decease is required. *Isser Chunder Sen vs. Ranees Dossee*. 2 W. R., p. 125.]

3. A widow's claim to the estate of her husband was disallowed on account of her blindness, but a maintenance for life was awarded. *Dace vs. Poorshuttum Gopal*. 1 Borr., p. 453.

4. [A Hindu died in 1832, leaving an only son, who had been blind from his birth, and two widows, the survivor of whom died in 1849, on the death of the surviving widow, the nephew succeeded as heir, the blind son being, by Hindu law, excluded from inheritance. The blind man having married, a son was born to him in 1858. The blind man died in 1861. *Held*, by Norman, J., that, on the birth of the blind man's son, he became entitled to the inheritance from which his father had been excluded.

*Held*, on appeal (by a Full Bench), that, by Hindu law, an estate once vested cannot be divested in favor of the son of an excluded person born after the death of the ancestor. Such ruling does not apply to the case of the son of an excluded person if, having been begotten, and being in the womb at the time of the ancestor's death he is afterwards born capable of inheriting. *Kalidas Dass vs. Krishan Chundra Dass*. 2 B. L. R. F. B., p. 103.]

The mental incapacity which disqualifies a Hindu from inheriting on the ground of idiocy is not necessarily utter mental darkness.

A person of unsound mind, who has been so from birth, is in point of law an idiot.

The reason for disqualifying a Hindu idiot is his unfitness for the ordinary intercourse of life. *Tirmmagal Ammal vs. Ramasoami Ayyangar*. 1 Stokes p. 214.

*See "Partition," post.*

*See "Inheritance," post.*

*See "Byrages," 1, ante.*

*See "Daughter." 1 Semble, ante.*

*See "Gift," 3, post.*

#### FAMILY.

*See "Undivided Hindu Family."*

## FATHER.

1. There is a distinction between ancestral and self-acquired property under the Mitakshara law, with regard to the right of a father to dispose of it. The fact of being an outcaste would not prevent him from exercising his rights over the property to the same extent as he might otherwise have done. *Ojoodhia Persaud Sing vs. Ram-sarun*. 6 W. R., p. 77; Wym., p. 87.

See "Alienation," 1 to 15.

## FATHER'S BROTHER'S SONS.

See "Inheritance."

## FUNERAL CEREMONIES.

1. The funeral ceremonies are to be performed by the eldest son, the expenses of which are to be defrayed out of the Estate. When to be performed by the younger son. See Shastrees' opinions. *Rookh-minee vs. Tooceram*. 1 Borr., p. 139.

2. Expenses of funeral ceremonies to be defrayed from the estate. *Hurree-bullubh Gungaram vs. Keshouram Sheowdas*. 2 Borr., p. 7.

3. The funeral expenses of a Hindu widow are chargeable on the share or estate of her late husband and not against her daughter, on the pretence of her inheriting the *Stridhana* of her mother. *Sheolall vs. Jepha*. 1 Borr., p. 429.

4. See "Ghelajee Nana Bhaee vs. Ameer Sing." 1 Borr., p. 389.

## GIFT.

1. In case of three donees with undefined shares, equal interests must be assumed. *Baboo Sheo Manoy Sing vs. Baboo Ramprukas Sing*. 25th September, 1831. 5 Sel. Rep., p. 145.

2. [When a legatee does not possess the character under which the gift was made, then, if either that character was assumed in deception of the testator, or it is reasonably clear that the testator would not have made the gift had it not been for the supposed existence of that character, the Court will construe the mention of the character as imposing a condition precedent to the gift. *Sremutty Siddesory Dassee vs. Doorgachurn Sett*. Bourke, H. C. Rep., O. J., p. 361.]

3. There is no prohibition in the Hindu law against a gift to an idiot. Although an idiot child cannot take by right of inheritance a gift by a parent to an idiot child, to operate after parent's death, is valid. *Baboo Kooldeb Narain vs. Mussamut Wooma Coomaree*. 1 Marshall, p. 357.

4. An assignment of property made with a view to the undisputed succession to the Raj of the elder branch of the family, and sufficient provision for the younger branches held to be a free, absolute, and personal gift to the parties specified in the deed. *Baboo Rameshwur Buksh Sing vs. Moharaja Moheshwur Buksh Sing*. 7th March 1855. S. D. A., Cal., p. 71.

5. A complete and unconditional transfer of property in free gift to a person, under a written instrument, cannot be revoked by any subsequent act on the part of the grantor. *Sabapattey Moddelly vs. Panyandi Moodelly*. M S. D. A. 1858. p. 61.

6. A person claiming the property of a deceased Brahmin, under a deed of gift and bequest, was held to be entitled to it as against a daughter, since the latter has no positive rights of succession, and is therefore not in a position to raise the question of any limit of the power of a Hindu to give or bequeath to the prejudice of his heirs. *Sheo Narain vs. Musst. Dooga Dall*. Oudh Sel. Cases, part 2, page 141, 16th October 1862.

7. A voluntary transfer of property by way of gift, if made *bond fide*, and not with the intention of defrauding creditors, is valid as against creditors. *Gánnabhái vs. C. Srinivasa Pillai*. 4 M. H. C. Rep., p. 84.

8. Plaintiff sued to enforce a gift to him of immoveable property by a woman living under his guardianship as against her husband. *Held*, that such taking of the woman's property by her kinsman is wholly repugnant to Hindu law.

*Quere*.—Can a woman, without the consent of her husband, absolutely alienate her own landed property? *Dantulúri Rayapparaz vs. Mallapudi Rayadu*. 2 Stokes, p. 360.

9. By Hindu law a man may make a gift of any of his property binding as against himself.

Where a Hindu made a gift to a person whom he said he had taken as *Manasuputra*. *Held*, that he could not set it aside on the ground that he erred in supposing that the donee could perform his funeral rites. *Abhachari vs. Ramchandrayya*. 1 M. H. C. Rep. Stokes, p. 393.

10. A deed of gift of land forming a part of a zemindary executed by the zemindar in favor of his daughter five years subsequent to her marriage, is not valid. *Sivananjanja Perumal Sethurayar vs. Muttu Ramalinga Sethurayar.* 3 M. H. C. Rep. Mills, p. 75.

See "Alienation."

See "Krishnarpun."

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#### GRANDFATHER.

See "Inheritance."

See "Grandson."

See "Alienation," 3, 9.

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#### GRANDMOTHER.

1. A paternal grandmother has a preferential right over a stepmother to the guardianship of a minor, and also to dispose of her in marriage with the assent of the nearest male kinsman. *Moharanee Ram Bunsee Koonwur vs. Moharanee Soobh Koonwur.* 7 W. R., p. 321.

See "Maintenance."

See "Guardian and Ward," 3.

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#### GRANDSON.

1. A grandson may by Hindu law, irrespective of all circumstances, maintain a suit against his grandfather for compulsory division of ancestral family property. *Nagalinga Mudali vs. Subburmaniya Mudali.* 1 Stokes, p. 77.

See "Alienation," 3, 9.

See "Exclusion from Inheritance," 4, *ante*.

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#### GUARDIAN AND WARD.

1. The mother of an illegitimate infant is entitled to the custody of it, as against the putative father, where there appear no circumstances to control the right. *The King vs. Nagapen.* 2 Str. N. M. C., p. 253.

2. The power of a manager for an infant heir to charge ancestral estate by loan or mortgage, is, by the Hindu law, a limited and qualified power, which can only be exercised rightly by the manager in a case of need, or for the benefit of the estate. But where the charge is one that a prudent owner would make in order to benefit the estate, a *bond fide* lender is not affected by the

precedent mismanagement of the estate. *Hunoomanpersaud Pandey vs. Mussamut Babooee Munraj Koonwaree*. 6 M. I. A., p. 39.

3. An elder brother, even though only a half-brother, is the natural guardian of a minor (whose mother is disqualified by loss of caste) in preference to a grandmother. *Mussamut Muhtaboo vs. Gunesh Lall*. 3rd July 1854. S. D. A., Cal., p. 329.

4. In a suit by a Hindu against his brother's fourth wife and a daughter by his first to prove his right to the guardianship of the minor son of his brother by his first wife, separation of the brothers being admitted. *Held*, that the step-mother was the legal guardian, and in the event of her resigning, then the uncle in preference to the half-sister. *Lukmee vs. Amur Chand*. 1 Borr., p. 163.

*See* "Alienation," 16, 17,

*See* "Grandmother."

*See* "Parent and child."

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#### GUNGA PUTRO.

*See* "Usage."

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#### HUSBAND AND WIFE.

*See* "Marriage."

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#### IDIOCY.

*See* "Gift," 3.

*See* "Lunatic."

*See* "Exclusion from inheritance."

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#### ILLEGITIMACY.

1. The Hindu law independently of special usage or custom, does not make illegitimacy an absolute disqualification for caste, so as to affect, in the relations of life, not only the bastard, but also his legitimate children.

A Hindu of a caste governed by the Shastras may contract a valid marriage with the daughter of a bastard.

*Semble*.—A Sudra need not marry a wife of the same sect or caste with himself.

The Hindu, unlike the English law, recognizes a bastard's relation to his father and family.

By birth, and without any form of legitimation, bastards of the three twice-born classes are now recognized as

members of their father's family, and have a right to maintenance.

In the case of Sudras the law has been, and still is, that bastards succeed their father by right of inheritance.

The presumption of legitimacy where there has been opportunity for sexual intercourse, is not irrebuttable. *Pandaiya Telaver vs. Puli Telaver*. 1 Stokes, p. 478.

2. In a suit for maintenance brought by an illegitimate son of a Hindu zemindar, deceased, *Held*, that it was established that the plaintiff was the natural son of such zemindar, and recognized by him as such, it having been not essential to the plaintiff's title to maintenance that he should be shown to have been born in the house of his father, or of a concubine possessing a peculiar status therein.

Case remanded for the Courts in India to try whether such maintenance can be a charge upon an impartible zemindary, or if not, out of what property or fund, if any, the son was entitled to be paid. *Mutuswamy Jagavera Yettappa Naiken vs. Ven Kataswara Yettappa*. 2 B. L. R., P. C., p. 15.

3. The illegitimate children of an Englishman by two Native Hindu women, one of whom was of the Brahmin caste, who had been brought up as Hindus, and lived together as a joint family, were held to be Hindus.

The partnership so constituted between them differed from the co-partnership of a joint Hindu family as defined by the Hindu law, and that at the death of each son, his lineal heirs representing their parent would be entitled to enter into partnership. *Myna Bayee vs. Ootaram*. 8 M. I. A., p. 400.

4. Among Sudras, illegitimate issue inherit to their putative father's estate; and where sons succeed to their father, brothers living and dying undivided succeed to one another. *Vencataram vs. Vencata Lutcheme Ummall*. 2 Str., N. M. C., p. 304.

5. The illegitimate son of one of the mixed classes between the second and third of the regenerate classes, has no title to inherit by the ordinary rules of Hindu law, and the circumstance that the father was illegitimate does not alter the law. *Sree Gajapaty Hari Krishna Deva Garu vs. Sree Gajapaty Radhica Pattu Moha Devi Garu*. 2 Stokes, p. 369.

7. The illegitimate son of a Sudra by a concubine not being a female slave, is entitled to maintenance. *Mutusamy Jagavera Yettapa Naikur vs. Venkatasubha Yetta.* 2 Stokes, p. 293.

See "Inheritance."

#### INCONTINENCE.

1. *D.*, a Pardesi Hindu residing at Nāsik, died, leaving two widows, *B.* and *P. B.*, who was the first wife, though not incontinent, had been turned out of his house by her husband sometime after he married *P.* by *pāt*.

In a suit by *B.* to recover a moiety of *D.*'s estate, *P.*, while admitting that she herself had been leading a life of prostitution since *D.*'s death, resisted a partition of his estate, on the grounds that *B.* had, since *D.*'s death, cohabited with *M.*, and subsequently married with *R.*, both of which allegations *B.* denied :—

*Held*, that, though, by Hindu law, incontinence excluded a widow from succession to her husband's estate, yet if the inheritance were once vested, it was not liable to be divested, unless her subsequent incontinence were accompanied by degradation ; but that by Act XXI. of 1850, deprivation of caste can no longer be recognised as working a forfeiture of any right or property, or affecting any right of inheritance.

*Held*, however, also, that if *B.* had duly re-married, she would cease to have any right to recover or hold any part of her late husband's property ; and, as the District Judge, on appeal, had left the fact of *B.*'s re-marriage unascertained, his decree must be reversed, and the case remanded for a finding on that question. *Parvati Kom vs. Bhiku Kom Dhondiram.* 4 B. H. C. Rep., A. C. J., p. 25.

#### INHERITANCE.

1. *Generally.*
2. *Of Sons, Grandsons and Great-Grandsons.*
3. *Of Illegitimate children.*
4. *Of Widows.*
5. *Of Daughters, and their sons.*
6. *Of Parents.*
7. *Of Step-mother.*
8. *Of Brothers, and their sons.*

9. *Of Sisters and their sons.*
10. *Of other heirs*
11. *Of Bandhus.*
12. *Of Pupils.*
13. *By Custom.*
14. *To woman's property.*
15. *To the property of an out-caste.*

### 1.—Generally.

1. [An inheritance cannot remain in abeyance for an unbegotten heir (such not being a posthumous son). The succession must vest in the heirs existing at the time of the death of the person whose inheritance descends. *Koylas Nath Doss vs. Gyamonee Dossee*. Suth. Rep., p. 314.]

2. Plaintiff sued to recover from defendant his share in a patellship, being one of the *bhaeebund*, and as such, a co-heir.

Shown in evidence that the great-grandfather of both parties married twice, and that defendant was lineally descended from the first marriage, and plaintiff from the second.

*Held*, in the *Sudder Dewanny Adawlut*, that by the Hindu law of inheritance, the descendants by a second marriage could only succeed to property held by the descendants by a first marriage, when all the latter were extinct. *Dinajee Bin Doolbhajee vs. Ramjee Bin Dyajee*. 3rd April 1841. S. D. A., Bom., p. 11.

3. The reversionary heirs to an estate of a sonless Hindu (vacated by the widow's death to which she succeeded), are, his heirs surviving at her decease, so that of several kinsmen of equal degree who would have jointly succeeded, but for the widow, if any die in the interim between the deaths of the husband and widow, their heirs are excluded. *Laxmie Narayan Sing vs. Tulsi Narayan Sing*. 5 Sel. Rep., Cal., p. 282. 9th April 1833.

4. The heirs of the husband who dies childless, and is succeeded by his widow, have no right of inheritance until after the death of the widow; and that therefore those in the same decree who are alive at the time of the widow's demise inherit alike equally, without advertence to the death of their parent, before or after the decease of the husband. Judgment of Mr. Dick, J., Messrs. Colvin and Patton, J.J. dissentient. *Jankee Sing vs. Jotee Sing*. 7th July 1855. S. D. A., Cal., pp. 367, 380, 382.



5. [That under the Hindu law as current in Bengal, the existence of the relative entitled to succeed constitutes his title to succeed. The right to succession vests immediately on the death of the owner of the property, and cannot, under any circumstance, remain in abeyance in expectation of the birth of a preferable heir not conceived at the time of the owner's death. *Kesub Chunder Ghose vs. Bishnopersaud Bose*. 13th December 1860. 2 S. D. A., Cal., p. 340.]

6. *Held*, that ceremonial adoption was necessary to constitute a son (not begotten), and in the absence of proof of such adoption a right of inheritance cannot possibly be admitted. *Luchmon Sing vs. Government*. S. D. A., N. W. P., 29th March 1866.

7. The mere act of performing the funeral rites of a deceased Hindu can give no title of succession without proof of right. *Duttnaraen Sing vs. Ajeet Sing*. 14th February 1799. 1 Sel. Rep., Cal., p. 26.

8. By the Hindu law in force in Mithila or Tirhoot, the right of succession vests in the descendants in the paternal in preference to those of the maternal line; and such law continues to regulate the succession to property in a family who have migrated from that district, but have retained the religious observances and ceremonies of Mithila. *Rajendur Narain Rae vs. Rutcheputty Dutt Jha*. 2 M. I. A., p. 132.

9. The general rule of the Hindu law of inheritance is partibility. The succession of a single heir as in the case of a Raj is the exception. The Secretary of State in Council of India *vs. Kamachee Bhoje Sahaba*. 7 M. I. A., p. 476.

10. Where a person being united with his family should acquire wealth at home or abroad, and die without separating, then his brother first inherits, next his mother, and if neither of them exist, his widow succeeds. *Man Bae vs. Krishnee Bae*. 2 Borr., p. 141. (See note by the Judge, p. 146. And *Govind Das Doolubhdas vs. Muhallukshmee*. 1 Borr., p. 267.)

11. A Hindu subject to the Mitakshara may die possessed of a share of joint property and also of separately-acquired property. The two will not necessarily devolve on the same heir, but they may either descend to different persons, or, if descending to the same persons, may descend in a different way, and with different consequences. *Mussamut Petum Koonwur vs. Joykissen Doss*. 6. W. R., n. 101: Wym., p. 141.

12. [An heir takes the property left by his ancestor subject to his debts and liabilities. *A* died indebted, and a decree was obtained against *B.* his heir. Another decree was also passed against *B.* for his personal debts, and the property of *A.* was attached and sold for this latter decree, and *C.* was the purchaser. The property was then sold in satisfaction, of the former decree, and *D.* became the purchaser. *Held,* that *C.* had no preferential right against *D.,* the subsequent purchaser. *Gunganarain Paul vs. Umesh Chunder Bose.* *Suth. Rep.,* 277. *See Nilkant Chatterjee vs. Peary Mohun Dass.* 3 B. L. R., O. C., p. 7.]

13. Proprietary right is created by birth, and not by conception. A child in the womb takes no estate. In cases where, when the succession opens out, a female member of the family has conceived, the inheritance remains in abeyance until the result of the conception can be ascertained. If the child be still-born, the estate goes not to heir of such child, but to the heir of the last owner. *Mussamut Goura Chowdrain vs. Chummun Chowdry.* *Suth. Rep.,* p. 340.

14. *A.* held possession during his life, and *B.* the widow succeeded to the property. *C.* sued to recover possession on the ground that *A.* having been a leper, was unable to succeed to any heritable property, and therefore had *never* held possession. *Held,* that such circumstance can form no legal bar to *A.*'s heirs, *A.* having held possession during life. *Bheecaree Dacoon Bagdee vs. Nowlassee Bewah.* 4th July 1859. *S. D. A., Cal.,* p. 933.

## 2.—Of sons, grandsons, and great-grandsons.

15. Claim by a man against his stepmother to obtain a half of his father's estate, leaving the other half to her son, his younger brother, granted after deduction of a twelfth share of the whole for his sister's dower, and a suitable sum for the brother's marriage, but disallowing any for obsequies celebrated by the stepmother or the other son. *Laroo vs. Manickjee Shamjee.* 1 *Borr.,* p. 461.

16. Sons take the inheritance *per capita* not *per stripes* according to their mothers. *Mussamut Muncha vs. Brij. Bhookun.* *Sel. Rep., S. D. A., Bom.,* p. 1.

17. The son of a Sudra, by a slave girl, is not entitled to share with legitimate sons in the inheritance of an uncle by the father's side. *Nissar Murtojah vs. Kowar Dhunwant Roy.* 1 *Marshall,* p. 609.

18. A grandson, his father being dead, shares equally with a son the self-acquired property of the grandfather. *Luchmon Persaud vs. Dabee Persaud*. 1 W. R., p. 317.

19. As regards the rights of sons by different wives to inherit, whether in co-parcenary, or as sole heir (except perhaps the son of the first wife) the priority in point of time of their mother's marriages has never been regarded when the wives were equal in caste and rank, and the rule of primogeniture was and is the same in the case of sons by several wives of equal caste and rank as in the case of sons by one wife. *Sivananjan Perumal Sethuraya vs. Muttee Ramalinga Sethurayar*. 3 M. H. C. Rep., p. 75.

20. *Held*, that, according to the later expositors of Hindu law in the tracts governed by the Benares law, a great grandson is included among near heirs; that the doctrine in the case of *Shiboo Sing* decided on the 17th July 1855 (Reports S. D. A., N. W. P., vol. X., p. 415), which rules that in default of grandsons of the last male owner, the inheritance can descend no further is erroneous, and the ruling, in accordance with the earlier precedents, that in default of nearer of kin, *sapindas*, or parties related in the seventh degree (the enumeration commencing from whence the direction of the line diverges), are entitled to inherit. *Held*, also, that in default of *sapindas*, the inheritance descends to *Samanadakas*, or paternal kindred, extending to the fourteenth degree has been latterly disregarded by subsequent precedents. *Augur Sing and others vs. Ram Sing and others*. 18th July 1865. S. D. A., N. W. P., p. 4.

In case of a real and adopted son, *See* "Adoption."

*See* "Maintenance," 3.

### 3.—Of Illegitimate Children.

21. An illegitimate son of a Khatri, one of the three regenerate castes by a Soodra woman cannot by Hindu law of inheritance, succeed to the inheritance of his putative father; but he is entitled to maintenance out of his deceased father's estate.

*Secus*. In the case of a Soodra class, illegitimate children being qualified to inherit. *Chioturya Runmurdu Syn vs. Sahub Purhlad Syn*. 7 M. I. A., p. 18.

*See* "Illegitimacy," 1, 3, 4, 5.

## 4.—Of Widows.

22. The widow in default of issue is entitled to succeed to the whole of her deceased husband's estate ; but her title to such estate is only as a tenant for life, and she has no power to alienate or devise any portion of her husband's estate which on her death goes to his legal heirs. *Keerut Sing vs. Kolahul Sing*. 2 M. I. A., p. 331.

23. The childless widow of a separate brother is heiress to his own estate, but has no right to a share of the estate of his brothers dying after him. *Pranshunkur vs. Prankoonwur*. 1 Borr., p. 471.

24. Succession of a childless widow upheld under the Hindu law against the rights of the stepdaughter, said to be superior according to the caste rules. *Gunga vs. Jeevee*. 1 Borr., p. 246.

25. A Hindu, an inhabitant of Bombay, entitled to separate moveable and immoveable property, dies without male issue, leaving a widow, four daughters, a brother, and the male issue of other deceased brothers. The widow is entitled to the moveable property absolutely, and to the immoveable property for life. Subject to the widow's interest, the immoveable property descends to the daughters absolutely in preference to the brother and the issue of the deceased brothers. *Pranjeewan Das vs. Dewcoover Bace*. 1 B. H. C. Rep., p. 130.

26. A Hindu widow's right to succeed to her husband's ancestral undivided property is only as his immediate heir.

A widow can only inherit family property where there has been a partition among the co-parceners, of whom her husband was one, or where the whole property has vested in her husband by the death of all the co-parceners.

The widow of an undivided Hindu who leaves a co-parcener him surviving, has merely a right to maintenance. *Peddammattu Viramani vs. Appu Rau*. 2 Stokes, p. 117.

27. A Hindu widow, whether childless or not, stands next in order of succession on failure of male issue. Daughters can only succeed on failure of widows.

Where A. had two wives B. and C., and B. predeceased A., leaving three daughters, and C. survived A., and who was childless. *Held*, that C. succeeded to A's property in preference to the three daughters. *Perammal vs. Ven Katammal*. 1 Stokes, p. 223.

28. Under the Hindu law, a widow was not entitled to inherit the estate of her husband's brother. *Choorā vs. Mussamat Busuntēe*. H. C., N. W. P., vol. I., p. 174.

29. *Held*, that a widow cannot inherit the estate left by her husband's uncle. *Mussamat Goornee vs. Mussamat Omroo Koonwur*. H. C., N. W. P., vol. I., p. 149.

30. Where a widow having lost her rights in her husband's estate on account of re-marriage under the provision of Sec. 2, Act XV. of 1856, was allowed to retain possession by the next reversioners. *Held*, that such arrangement by the next reversioner was only binding upon him, and not on the heirs of such reversioners, who, on the death of the former, were entitled to sue for possession of the property by dispossessing the widow. *Kaisoo vs. Mussamat Jumna*. H. C., N. W. P., vol. I., p. 140.

31. According to Hindu law current in Southern India, two or more lawfully married wives (*pātnis*) take a joint estate for life in their husband's property with rights of survivorship and equal beneficial enjoyment.

A claim by one of several widows to an absolute partition of the joint estate, giving to each a share in severalty is not maintainable.

The position of senior widow gives her, as in the case of other co-parceners, a preferable claim to the care and management of the joint property.

A case may be made out entitling one of several widows to the relief of separate possession of a portion of the inheritance. Such relief ought to be granted when, from the nature or situation of the property and the conduct of the co-widows or co-widow, it appears to be the only proper and effectual mode of securing the enjoyment of her distinct right to an equal share of the benefits of the estate. *H. H. M. Jijoyiamba Bayi Saiba and another vs. H. H. M. Kamakshi Bayi Saiba and twelve others*. 3 M. H. C. Rep., p. 424.

### 5.—Of Daughters and their Sons.

32. The estate of a Hindu father devolved on his three daughters qualified to succeed him. The daughters are entitled to hold only during their lifetime. On the death of any one of them the survivors succeed to her share, and that, so long as any one of the daughters survived, no daughter's son could inherit. The estate

enjoyed by a daughter as heir to her father is limited to her life only. It is not her stridhun, and on her death it will go to the next heirs of the father. *Heeraloll Baboo vs. Mussamut Dhuncoomary Beebee*. 26th May 1862. S. D. A., Cal., p. 190.

33. One *V. G.* died leaving no son but two widows—*K.* and *R.* A dispute having arisen, *K.* brought a suit against *R.*, and obtained a decree, dividing equally between them the lands of the deceased husband. *K.* took possession of her moiety, and held same till her death, when *R.* took possession.

In a suit by the sons of the deceased daughter of *K.* against *R.* for the share formerly held by *K.* *Held*, that they were not entitled in preference to the surviving widow. *Rindamma vs. Vencata Ramappa*. 3 M. H. C. Rep., p. 268.

34. Under the Hindu law, where a property is proved to be a separate and divided property, the daughter's sons are the legal heirs entitled to it, and not more remote relations to the deceased. *Burar Singh vs. Mussamut Hansi*. H. C., N. W. P., vol. II., p. 166.

35. *Held*, that, according to Hindu law current at Benares, the daughter's sons inherit in default of qualified daughter, and that if there be sons of more than one daughter, they take *per capita* and not *per stirpes*. The plaintiff was equitably entitled to recover the profits of the share adjudged to him, from which he was unjustly excluded, in consequence of his grandmother's illegal process. *Ram Suruth vs. Baboo Basdeo*. H. C., N. W. P., vol. II., p. 168.

36. Amongst Oudeech Brahmuns, the daughter's sons cannot inherit their grandfather's property during the lifetime of his son's widow. *Muhulukmee vs. The Grandsons of Kripashookull*. 2 Borr., p. 557.

37. A maiden daughter does not succeed to her father's estate in preference to her paternal uncle. *Mussamut Toolsee vs. Mohadeb Raot*. 6 W. R., p. 197.

38. By the law of Benares, preference is given to the married daughter who is indigent to the exclusion of wealthy daughters. But married daughters are not excluded from succession by either the *Dyabhaga* or *Mitakshara*. *Benode Koomaree Debee vs. Purdhan Gopal Sahee*. 2 W. R., p. 177.

39. A Hindu woman of Behar who had inherited the entire estate of her father, died, leaving a daughter and

a deceased sister's son's sons. *Held*, that the latter should succeed to the estate, and that *per capita*, and not *per stirpes*. *Sheo Sehi Sing vs. Mussamut Omed Koonwar*. 6 Sel. Rep., Cal., p. 301. 17th August 1840.

40. *Held*, that under Hindu law a daughter cannot claim her father's inheritance during her mother's lifetime. *Ramjua vs. Mussamut Gees*. 23rd December 1865. S. D. A., N. W. P., p. 207.

41. A daughter's son, during the lifetime of his mother is not competent to challenge the act of his maternal, grandmother, for the mother is the preferential heir. H. C., N. W. P., vol. I., p. 1.

*See* "Daughters."

*See* "Inheritance," 24, 26.

#### 6.—Of Parents.

42. A mother inheriting from her son has not an absolute property in the estate, but merely a life interest, without power of alienation. *P. Bachiraju vs. V. Venkattappadu*. 2 Stokes, p. 402.

43. By the Hindu law of inheritance, the mother succeeds in preference to the sister, in default of sons, widow, and daughters. Partition to be proved by circumstances in the absence of written deed. *Doe Dem. Ramasawmy Moodeliar vs. Vallatah*. 2 Str. N. M. C., p. 211.

44. [In a suit by a Hindu woman to recover from a second widow her half-share of their deceased husband's estate, *Held*, that the incontinence of plaintiff was established, and the right of succession which by Hindu law she has thereby forfeited is not affected by the provisions of Act XXI of 1850, which refer to the renunciation of the Hindu religion, and not to a case of incontinence. *Raj Conwarree Dossce vs. Golabee Dossee*. 30th December 1858. S. D. A., Cal., p. 1891.]

45. A Hindu died leaving a widow, a minor son and a daughter. The widow re-married after her husband's estate had vested in her son. The son subsequently died; and his stepbrother took possession of the property. The widow then brought a suit against the stepbrother for possession. *Held*, that the suit was maintainable, and that she could properly succeed as heir to her son, notwithstanding her second marriage. *Akora Suth vs. Boreani*. 2 B. L. R., A. C., p. 199.

### 7.—Of Stepmother.

46. A stepmother cannot take by inheritance from her stepson. *Lalla Johee Lall vs. Deo Bane Koonwur*. *Sevestre Con. Mar.*, p. 439 (and the Full Bench Ruling on reference from the Division Bench, *S. N. W. R.*, p. 173).

### 8.—Of Brothers and their Sons.

47. Brother succeeds before the mother of a man deceased without separation. *Mem Bae vs. Kishnee Bae*. 2 *Borr.*, p. 141.

48. A brother does not succeed in preference to the widow to the estate left by his brother who had separated from the family and made his fortune without assistance from his father or brother. *Govind Das Doolubh Das vs. Muhelukshmee*. 1 *Borr.*, p. 267.

49. In an undivided family nephews succeed together with their uncle to the estate of an uncle deceased in preference to the daughter. *Bhugwan Golabchund vs. Kriparam Anundram*. 2 *Borr.*, p. 29. (See *Deo Bae vs. Man Bae*. 1 *Borr.*, p. 29.)

50. A half-brother is entitled to inherit the property of his half-brother in preference to his widow and daughters when there had been no separation. *Mankoonwur vs. Bhagoo*. 2 *Borr.*, p. 157.

51. A stepbrother inherits after the widows, if he survives them, otherwise a uterine brother's son succeeds. *Burham Deo Roy vs. Punchoo Roy*. 2 *W. R.*, p. 123.

52. [A nephew of the whole blood takes precedence of a nephew of the half-blood in a joint undivided family as heir to their deceased uncle. *Gooroo Churn Sirkar vs. Koylash Chuunder Sirkar*. 6 *W. R.*, p. 93 ; 2 *Wym.*, p. 110.]

53. In default of all heirs a brother's grandson can succeed. *Kurreem Chund Gurain vs. Oodung Gurain*. 6 *W. R.*, p. 158 ; 2 *Wym.* p. 177.

54. *Held*, that on the death of the survivor of two brothers, who had been associated in business and property, the son of the other who had succeeded his father in the partnership had a better title to succeed to the estate of the deceased than a third brother, who had always been separate from the other two. *Lakh Raj vs. Jabun Lall*. 3rd May 1866. *S. D. A., N. W. P.*, p. 163.

55. Of three brothers forming together a joint Hindu family, one separated himself therefrom and died, leaving a son, the plaintiff. The other two with their families re-



mained joint. One died leaving a son, the defendant. The other died leaving a widow. On the widow's death this suit was brought to establish the plaintiff's right as one of the two reversionary heirs.

*Held*, that the separated brother did not inherit, and that the defendant was alone entitled to succeed.

*Quere.*—As to the effect of re-union on inheritance. *Kesubram Mohaputtur vs. Nandkissore Mohaputtur.* 3 B. L. R., A. C., p. 7.

9.—*Of Sisters and their Sons.*

56. According to the law of inheritance prevailing in Bombay, sisters succeed to the estate of their deceased brother in preference to father's brother's sons. *Venayek Anundrow vs. Luxamee Bacc.* 9 M. I. A., p. 516.

57. Claim by a widow of the Dusa Sreemalee Goldsmiths to inherit moveable property left by her late husband's nephew, in preference to that nephew's sister and her sons. Disputed on the plea that the property sued for being the proceeds of a house derived to the nephew direct from his maternal grandfather, it must remain in the female line. *Held*, that the sister must succeed to the property when derived from the maternal grandfather. *Laroo vs. Sheo.* 1 Borr., p. 80.

58. A childless sister succeeds to the property left by her brother in preference to the sons of other sisters who predeceased the brother. *Icharam vs. Prummanund Bhaee Chund.* 2 Borr., p. 515. See *Laroo vs. Sheo.* 1 Borr., p. 80. *Notes 2 and 3.* And *Sree Brij Bhokunjee Moharaj vs. Sree Gokoolootsaojee Moharaj.* 1 Borr., p. 202. *Note 1.*

59. A Hindu, an inhabitant of Bombay, entitled to separately acquired moveable and immoveable property, died leaving a widow, an infant son, three daughters, and a brother. The son died in infancy, and without having married. *Held*, on demurrer, that the widow, as mother of the son, inherits his property, as to the moveables absolutely, as to the immoveables for life, with remainders to the sisters of the son as his heirs absolutely.

The word "parents" in the order of succession as laid down in the *Mitakshara*, includes father and mother, and, in like manner, "brethren" includes sisters as well as brothers.

*Held*, on appeal; in a separated family sisters take as heirs to an unmarried and intestate brother in preference to relations of the father. Marriage does not exclude them from inheritance. *Vinayek Anundrao vs. Lexumee*

Bace. 1 B. H. C. Rep., p. 117. See judgment of the Privy Council on appeal in 9. M. I. A., p. 516, cited *ante*.

60. It is by no means clear that a sister in the absence of any other near relative, or any other relative, is not the heir to her brother; the authorities being on either side. *Mussamut Bhaga Dye vs. Mussamut Annud Kooar Dye*. Sevestre Con. Mar., p. 70.

61. A sister cannot inherit as heir to her brother. *Ram-dyal Deb vs. Mussamut Magnee*. 1 W. R., p. 227.

62. A sister is no heir to her uterine brother. The Mitakshara nowhere recognizes the sister as heir. *Mussamut Guman Kumari vs. Srikant Neogi*. Sevestre Con. Mar., p. 460.

63. [So according to the Bengal School. *Rajkoonwaree Kripamoyee Dabee vs. Rajah Damoodur Chunder Deb*. 20th February 1845. S. D. A., Cal., p. 27.]

64. A sister's son does not inherit according to the Mitakshara. *Mussamut Gumun Kumari vs. Srikant Neogi*. Sevestre Con. Mar., p. 460

65. The right of succession accrues to nephews (sister's sons), whether born before or after the death of their maternal uncle, not on the death of the maternal uncle, but on the death of his widow, and the nephews can sue to question the validity of the alienation without legal necessity. *Govindmoonsee Dossee vs. Sham Lall Bysack*, and *Kali Coomar Chowdry vs. Ramdoss Shaha*. Suth. Rep., p. 153.

66. [A sister's son, in order to have a preferential title over the paternal uncle, must have been born or conceived when the succession opened out. A mother cannot be trustee for a son who might hereafter be born. *Rashbehary Roy vs. Nemye Churn*. Suth. Rep., p. 223.]

67. [A sister's son born after the death of his maternal uncle, but during the lifetime of his maternal grandmother, who was in possession of the property as heir to her son, inherits the estate left by his maternal uncle. *Radhagovind Doss vs. Sheik Meajan*. 1 W. R., p. 124.]

68. [Neither a sister nor a sister's daughter can inherit. *Kalee Persaud Surma vs. Bhoirubee Dabee*. 2 W. R., p. 180.]

69. Paternal uncle's son succeeds in preference to a sister's son. *Duneshwur Deoshunkur vs. Deoshunkur Doolubhram*. 16th February 1849. Sel. Rep., S.D.A., Bom., p. 63.

70. According to the *Benares* school of Hindu law prevailing in the *Mithila* country, a sister's son, in the absence

of lineal heirs, has no title to succeed as heir to his deceased uncle's ancestral estate.

Suit by a sister's son against his uncle's widow to set aside an adoption made by the widow to her deceased husband. *Held*, reversing the decree of the *Sudder Dewanny Adawlut* at *Agra*, that, as sister's son, he had no *locus standi* to sue as reversionary heir for his deceased uncle's estate, or to challenge the widow's adoption. *Tha-coorain Sahiba vs. Mohun Lall*. 11 M. I. A., p. 386. (See *Mussamut Moonea vs. Dhurma*, cited herein, p. 393.)

71. In the absence of nearer relatives, a man may be heir to his mother's brother as regards property subject to the *Mitakshara*. *Amrita Kumari Debee vs. Lakhinayrayan Chuckerbutty*. 2 B. L. R., F. B., p. 28.

72. According to the Hindu law in force in the Madras Presidency, a sister's son does not inherit. *Doe dem. Kullamul vs. Kuppu Pillai*. 1 Stokes, p. 85.

73. A died leaving a childless sister and two nephews by two other sisters predeceased, but after having made a will giving away the whole of his property to one of his nephews, *Held*, that the will was void, as it gave the whole property to one of the nephews to the exclusion of the other. *Held*, also, that the right of inheritance pertained to the surviving sister, for the rights of the other sisters were lost by their dying before their brother. *Icharam Sumboo Dass vs. Pramanund Bhaee Chund*. 1 Borr., p. 515.

#### 10.—Of other Heirs.

74. [An uncle's son succeeds in preference to a childless widowed daughter. *Tarra Monee Gooptea vs. Mussamut Luckhymonee Dassee*. 1 Marshall, p. 29.]

75. [Brother's daughter's son is no heir. *Choorah Monee Bose vs. Prosono Coomar Mitter*. 1 W. R., p. 43.]

76. According to the *Mitakshara*, daughter or a son's daughter does not inherit. *Koomud Chunder Roy vs. Seetakanth Roy*. S. N. W. R., p. 75.

77. Brother's daughter's son cannot inherit, even if there be no other heirs. *Ilias Koonwur vs. Agund Rai*. 24th May 1820; 3 Sel. Rep., Cal., p. 50.

78. Grandsons of a daughter's son cannot inherit even if there be no other heirs.—*Ibid*.

*Held*, that a cousin in the third degree has no right of inheritance in the presence of cousin in the second degree

Muhabur Persaud *vs.* Ram Surun. H. C., N. W. P., vol. IV., p. 6.

79. A neice in her own right, or even in right of her son, is not among the heirs of the last male owner of property under the Hindu law. Deno Nath *vs.* Mussamut Sohnee. 3rd March 1866. S. D. A., N. W. P.

80. That under the law prevailing in these provinces, the grandsons of a maternal uncle are not considered among the heirs entitled to succeed to a deceased nephew's property. Bechun Sing *vs.* Mussamut Rukminia. 31st October 1865. S. D. A., N. W. P., p. 165.

81. A. (of the Lewa Koonbee caste) died leaving a widow B., who, by her last will and testament, bequeathed all the property which she had inherited from her husband to her brother's son C. On suit by A's nephew's widow, D., against the sons of B's brother. *Held*, that the will was illegal, and therefore void, and that D., with the consent of A's brother's grandson, was entitled to keep possession of the property during her life, after which it will belong to A's brother's grandson. Dhoolubh Bae *vs.* Jeevee. 1 Borr., p. 75. (Quere.—Did D's husband survive B.?)

82. A. died during the lifetime of his father B., leaving a childless widow. B. died leaving another son C., who died leaving a widow and daughters. Upon the death of C., his widow, and after her, his daughters succeeded to the property. In suit by A's widow for a share of the property, *Held*, upon the exposition of the law by the Shastras, that A's widow had no right of inheritance to the estate of her father-in-law, but C. and his widow and daughters were bound on their respectively taking the estate to maintain the plaintiff. Mussamut Jethee *vs.* Mussamut Sheo Baye. 2 Borr., p. 640.

83. A deceased Hindu's father-in-law and brother-in-law are not his legal heirs. H. C., N. W. P., p. 14.

#### 11.—Of *Bundhus*.

84. Under the Mitacshara, if there be no kindred belonging to the same general family, and connected by funeral oblations, the successions devolve on kindred connected by libations of water. Gentiles must be exhausted before the cognates can succeed. Mussumut Dig Daye *vs.* Bhuttun Lall. 11-W. R., p. 500.

See "Samonodakas."

## 12.—Of Pupils.

See "Byraghee," 3.

## 13.—By Custom.

85. Family usage for fourteen generations, by which the succession to the Raj Zemindary of Tirhoot had uniformly descended entire to a single male heir, to the exclusion of the other members of the family, upheld.

A custom for the Rajah in possession in his lifetime to abdicate and assign by deed the Raj title, and domain to his eldest son, or next immediate male heir, held good, and a deed so assigning the Raj to an eldest son (provision being made for Baboo allowances for the younger sons) sustained. Baboo Gonesh Dutt Sing *vs.* Moharaja Moheshur Sing. 6 M. I. A., p. 164.

86. The Polliam tenure of Madras is an ancestral estate of the nature of a Raj, and though it may belong to an undivided family, yet it is not subject to partition. Naraguntty Lutchmeedavamah *vs.* Vengama Naidoo. 9 M. I. A., p. 66.

87. The zemindary of Shivagunga in Madras is in the nature of a principality, impartible and capable of enjoyment by only one member of the family at a time.

By the law of inheritance prevailing in Madras, and throughout the southern parts of India separate acquired estate descends to a widow in default of male issue of the deceased husband. The estate of a Hindu widow so succeeding to her husband's estate is similar to a tenant in tail by the English law, as representing the inheritance.

In a united family where there is ancestral property, and one of the members of the family acquires separate estate on the death of that member, such separate acquired estate does not fall into the common stock, but descends to male issue, if any, of the acquirer, or in default to his daughters, who, while they take their father's share in the ancestral property, subject to all the rights of co-parceners, inherit the self-acquired estate free from such rights.

Property belonging in common to a united family goes in the general course of descent of separate acquired property; but if there is a co-partnership between the different members of the united family, survivorship follows.

Upon the principle of survivorship the right of the co-partners in the undivided estate over-rides the widow's

right of succession; but with respect to self-acquired property of a member of the united family, the other members of the family have neither community of interest nor unity of possession. Therefore the foundation of the right to take by survivorship fails. *Katama Natchiar vs. The Rajah of Shivagunga*. 9 M. L. A., p. 539.

88. By the custom of a Hindu family no distinction was made between the issue of *sagyi* marriage and a *byahi* marriage. *Held*, that the issue of the son of a *sagyi* wife first married was entitled to inherit the property of the grandfather in priority to the issue of a son of a subsequent *byahi* wife. *Radaik Ghaseram vs. Budaik Persaud Sing*. 1 Marshall, p. 644.

#### 14.—*To Woman's property.*

89. The heirs of a widow are her husband's relations, not her own. Collateral relations of the male line declared entitled to all property (personal property included), in preference to nearer relations in the female line, *e.g.*, daughters and sisters; provided the deceased did not give or bequeath to the females during her life. *Bajoo Bulbhuddur Sing vs. Bajoo Pertaub Sing*. Oudh Civ. Cases, part 2, p. 139. 16th October 1862. *Quere*.—*Stridhun* (?)

90. According to the Law as current in Mithila, the son of the mother's brother, is not the heir to the peculiar property of a woman.

If the deceased left a brother, sister, sister's son, husband's brother's son, brother's son or son-in-law, any such person is entitled to succeed to the *Streedhun*. If she left none of these, the nearest *Sapinda's* of her husband are entitled to her peculiar property. She adopted son of a widow can succeed to her *Streedhun*. *Sreenarain Rai vs. Bhya Jha*, 27th July 1812. 2 Sel. Rep., Cal., p. 29.

91. [An adopted son is entitled to succeed to the *Streedhun* of his adoptive mother in the absence of daughters.

An adopted son by one wife may succeed to a co-wife's *Streedhun*. *Tincowree Chatterjee vs. Denonath Banerjee*. 5 W. R., p. 49.]

#### 15.—*To the property of outcastes.*

92. [The heirs of a prostitute are her prostitute daughters. A daughter who did not live with her mother, and therefore did not become an outcast, cannot succeed. The

relation of the respectable daughter with the outcast mother has been severed. *Taramonee Dossee vs. Motee Bamanee*. 6 Sel. Rep., Cal., p. 297. 30th July 1846.]

93. The doctrine of Hindu law that outcasts are incapable of inheritance has no bearing upon the case of the members of new families which have sprung from persons so degraded. *Tarachand vs. Reeb Ram*. 3 M. H. C. Rep., p. 50. See *Abraham vs. Abraham*. 9 M. I. A., p. 195.

94. *Held*, that the fact that plaintiffs are out of caste, and that men of pure blood of the tribe do not eat with them, is of itself no ground of exclusion from inheritance. Sec. 1, Act XXI. of 1850 having annulled any such disqualification. *Tajj Sing vs. Musst. Kousilla*. H. C., N. W P., vol. I., p. 90.

See "Sikhs."

#### JAINS.

1. The Jains are governed by the Hindu law applicable in the part of the country where the land is situate. *Moha-beer Pershaud vs. Mussamut Kundun Kowur*. 8 W. R., p. 116; Wym., p. 74.

#### JUJMANS.

1. Jujmans or families employing a priest cannot discard him in the absence of any disqualifying cause. But their consent in such appointment is necessary. *Mussamut Chowrasee vs. Jewun Chund Mehtoon*. 28th February 1837. 6 Sel. Rep., Cal., p. 152.

See "Purohit."

#### JOINT FAMILY.

See "Undivided Hindu Family."

#### KRISHNARPUN.

1. *Krishnarpun* by a widow in favor of her sister's sons maintained against the claims of the legal heir to the same property, but the donees were declared incompetent to take or disburse sums set apart for performance of the donor's funeral ceremonies. *Jugjeevun Nathoojee vs. Deo Sunkur Kasseeram*. 1 Borr., p. 436.

2. Suit by the donee of a *Krishnarpun* to recover property given away by a widow against the husband's sister's son decreed on the ground that a widow of a man

who died without male issue was permitted to give away her property in *Krishnarpun*, notwithstanding the existence of his sister's son. Kupoor Bhawanee *vs.* Sevukram Seosunkur. 1 Borr., p. 448.

3. The property given in *Krishnarpun* goes to the heirs of the donee, and does not on the death of the donor revert to his heirs. *Krishnarpun* may be made by one who has no male issue. Kaseeram Kriparam *vs.* Mussamut Ichha. 2 Borr., p. 548.

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#### KRITRIMA.

*See* "Adoption."

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#### KOOLACHAR.

*See* "Usage."

*See* "Inheritance by custom," *ante*.

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#### KURTA PUTRO.

*See* "Adoption."

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#### LIABILITY OF AN HEIR.

1. As, by the Hindu law, the succession to a son's estate with its liabilities devolve not upon the father, but upon the mother, she ought to be sued by the creditor for recovering money borrowed by her son. Soobramoneya Sastree *vs.* Anoovien. M. S. D. A., 1858, p. 45.

2. [A. succeeding to the estate of B., who died having become indebted to several parties, set up an entail and denied his liability to pay his ancestor's debt. *Held*, that the family custom by which the eldest son becomes heir to the estate does not alter the position of the estate in regard to its liability when in the hands of an heir for the debts of the ancestor. Radha Mudhunmohun Doss *vs.* Pudolabh Bunj. 13th March. 1 S. D. A., Cal., of 1860, p. 327.]

3. When a Hindu dies indebted, his estate does not in whole or in part, sufficient to pay the debt, vest in the creditor as if by hypothecation; but the entire estate absolutely passes to the heirs with full power to deal with the whole estate before satisfaction of the debts. The creditor has no lien on the estate preferential to him who takes the estate in pledge from the heirs, nor he can after the alienation thereof by heirs for *bond fide* and valuable



consideration, follow it in the hands of the alienee. He has merely a right of suit against the heirs personally who are held liable for the same to the extent of the assets they receive by inheritance. *Zubardust Khan vs. Inderman*. S. D. A., N. W. P., Full Bench, part 2, 1867.

4. The Hindu law binds a son to pay the debts of his deceased father, even if he have not inherited property from him. *Harbajee Raojee, Narayen Raojee, Govind Raojee, and Gopal Raojee vs. Hurgovind Trikun Dass*. 16th October 1847. S. D. A., Bom., p. 76.

5. Responsibility by Hindu law for the debts of a deceased person of the parties who took his assets. *Kupoorchund Huruk Chund vs. Dadabhoy Ruttunjee*. 6th September 1849. S. D. A., Bom., p. 126.

6. Suit brought against the sons of a person deceased to recover from them the amount of a decree against their father, during execution of which the father died in gaol, resisted on the part of one son that he was adopted by another person, and therefore not liable, and on the part of the others that they were not liable to the arrest to which they had been subjected; the adoption held proved, and that defendant relieved from liability for his father's debt; the other sons being held liable for, under Hindu law, but not liable to be arrested in satisfaction of their father's debts. *Pranvullubh Gokul vs. Deocristu Tooljaram, alias Dyabhaee*. 23rd May 1823. S. D. A., Bom., p. 4.

#### LIMITATION.

1. [In deciding an issue on the statute of limitations in a suit for a share of a joint inheritance, the Court below found that the plaintiff had not given evidence of possession up to the date of suit, and decided the issue against her. *Held*, that such finding was inconclusive, the real issue being whether the joint possession continued up to any time within the period of twelve years next before the commencement of the suit. *Mussamut Indormonee Dabee vs. Rajnarain Chund Mozoomdar*. 1 Marshall, p. 172.]

2. In a suit to set aside an adoption of a son, the period of limitation is not to be reckoned from the date of the adoption, if the members of the family who seek to set it aside have by their declarations or conduct subsequently shown that they did not know of the adoption, or did not

regard it as valid ; it should be reckoned from the time when there was distinct knowledge of the adoption. *Surbomonee Dabee vs. Petambur Dobeey*. 1 Marshall, p. 221.

3. The suit not having been instituted until after the lapse of twelve years from the plaintiff's succession to the shebait, was held to be barred by limitation. *Kishnonund Ashrom Dundy vs. Nursing Dass Byragee*. 1 Marshall, p. 486.

4. A suit to set aside the adoption of a second son must be made within twelve years from the cause of action. The maxim *ignorantia legis nil excusat* applies to questions of Hindu law of inheritance and adoption. *Radha Kissen Mohapater vs. Sree Kissen Mohapater*. 1 W. R., p. 62.

5. Limitation can be pleaded as a bar to a suit to set aside an alienation by a grandfather, the cause of action in such a case arising not from the date of the grandfather's death, but from the date of the alienation. *Baboo Seetulpersaud vs. Baboo Gour Dyal Sing*. 1 W. R., p. 283.

6. A suit to set aside alienations of ancestral property made by a childless Hindu widow during her life tenancy may be brought at any time within twelve years from the death of the widow. *Tiluck Roy vs. Phoolman Roy*. 7 W. R., p. 450.

7. A suit by a son to set aside an alienation by the father must be brought within twelve years from the date of the alienation unless the son be a minor, in which case the suit must be brought within three years from the time when the disability ceased. *Baboo Beer Kishore Subaye Singh vs. Baboo Hurbullub Narain Singh*. 7 W. R., p. 502. 4 ; Wym., p. 1.

8. In the case of a sale by a Hindu widow, which takes away both her right and the rights of all those claiming under her, the limitation runs from the date of sale. *Mussamut Gouree Dabee vs. Rajah Anund Nath Roy*. *Per Campbell, J.* Suth. Rep., p. 34.

9. Adverse possession which bars the Hindu widow representing the estate of her deceased husband, also bars the heir after her. *Mussamut Parbutty Moflessa vs. Mussamut Rajoo*. Suth. Rep., p. 88.

10. A suit by a son to set aside alienations by his father must be brought within twelve years from the date of alienation, or within twelve years from the date of the son attaining majority, supposing the alienations to have been

made during his minority. *Beer Chund vs. Doorga Pershaud*. *Suth. Rep.*, p. 215.

11. [In a suit by a daughter to inherit immoveable property by setting aside the adoption of the defendant made by her mother (a Hindu widow). *Held*, that the plaintiff's cause of action arose from the date of the adoption, and that her suit was governed by twelve years' limitation from that date. *Radha Kissoree Dossee vs. Guthee Kissen Sirkur*. *Suth. Rep.*, p. 272.]

12. Where a sum assigned 'to sons was, by the terms of the will, to be regarded as a legacy, and not as a charge on the estate for their maintenance, *Held*, that clause 2, Sec. 1, Act XIV of 1859 was the limitation applicable to suits under the will for recovery of the sum due as a legacy. *Held*, further, that the denial of the will by the persons under whom the plaintiffs claim was not a bar to the present suit. *Nana Narain Roy vs. Ramanund and others*. *H. C., N. W. P.*, vol. II., p. 171.

13. Where a decree is passed against ancestral property on confession of the ancestor, and the suit is brought by the sons to establish their reversionary right, or to obtain possession by setting aside the decree and confession *Held*, that the twelve years' limitation is applicable to such suit. *Nowbut Ram vs. Durbaree Lal*. *H. C., N. W. P.*, vol. II., p. 145.

14. [A suit brought to set aside an adoption upwards of twelve years after such adoption had been declared, with the full knowledge, and in the presence of the parties suing, was held to be barred by limitation. *Govind Kissore Roy vs. Radhamudub Adhicaree*. 26th May 1856. *S. D. A., Cal.*, p. 450.]

15. Adverse possession of a third person which would bar a Hindu widow would bar the reversioners also. A decree obtained against a widow *bonâ fide* and without fraud or collusion would bind the reversioner. A new cause of action does not arise on the death of the widow, *Nobin Chunder Chuckerbutty vs. Issur Chunder Chuckerbutty*. 9 W. R., p. 505, Full Bench Ruling.

#### LUNATIC.

1. Although a lunatic has no right to inherit, he is not debarred from taking an estate duly conveyed to him. *Gouree Nath vs. The Collector of Monghyr*. 7 W. R., p. 5; 3 Wym., p. 457.

## MAINTENANCE.

1. Salary drawn by a person cannot be taken into consideration in assessing the maintenance of a widow. *Vadda Balaram vs. S. Vudday Venkummap.* M. S. D. A., 1858, p. 225.

2. Where property in a family is manifestly inadequate to bear the charge of separate maintenance of a member of the family, the demand for imposition of such charge should be disallowed. *Cundemalla Ramakristnamah vs. C. Soobummah.* M. S. D. A., 1859, p. 82.

3. A separate maintenance will not be allowed unless it be proved that the party sued, is in possession of ancestral property yielding income upon which it may be charged. *Virabadrachari vs. Kappammul.* M. S. D. A., 1859, p. 265.

4. A brother's widow is only entitled to a separate maintenance out of ancestral property. *Bramavarapu vs. Venkamma.* M. S. D. A., 1859, p. 272.

5. A separate maintenance will not be allowed where the party sued has merely a floating and uncertain income. *Bramhavarpu Krishnayar vs. Venkamma.* M. S. D. A., 1859, p. 272.

6. A woman divorced for adultery, who has continued in adultery during her husband's life, and in unchastity after his death, is not entitled to maintenance out of the property of her deceased husband according to Hindu law. *Muttammal vs. Kámákshy Ammal.* 2 Stokes, p. 337.

7. A son, whether adopted or begotten, can claim maintenance of his father until put into possession of his share of the ancestral estate. *Ayyavu Muppanar vs. Niladhatchi Ammal.* 1 Stokes, p. 45.

8. A Hindu adultress living apart from her husband cannot recover maintenance from him so long as the adultery is uncondoned. A daughter living apart from her father for no sufficient cause, cannot sue him for maintenance. *Ilata Shavatri vs. Ilata Narayanau Nambudiri.* 1 Stokes, p. 372.

9. Suit for maintenance brought by a Hindu widow under the age of puberty jointly with her father. *Held*, that the support of a widow by her parents is optional, and that, should they refuse, her husband's heirs are bound to maintain her, even though she had not arrived at maturity at the time of her husband's death. *Ramian vs. Condummal.* M. S. D. A., 11th September 1858, p. 154.

10. Where the claimants to maintenance were the daughter-in-law, concubine, and illegitimate sons. *Held*, that the heirs, if they choose to demand it, ought to have possession of the property, paying a sum equal to the whole of the profits to the persons entitled to maintenance, as the profits were found to be insufficient to provide for their maintenance. *Omrao Sing vs. Mussamut Mankooes*. H., C., N. W. P., Vol. II., p. 136.

11. The heir who takes and becomes possessed of the estate of the deceased must be held to continue to be primarily responsible, both in person and property, for the maintenance of the widow, even though he should have fraudulently transferred the estate, or otherwise have improperly wasted it, and the widow is bound to look to the heir for her maintenance and to claim it from him primarily rather than from the estate transferred or wasted which may, nevertheless, be in the last resort answerable to her claim. *Ram Chundra vs. Mussamut Josoda*. H. C., N. W. P., Vol. II., p. 134.

12. [A Hindu died possessed of no property, but leaving a widow, on his death she left the house of her father-in-law and went to reside at her father's house. Her father-in-law was not possessed of any ancestral property. *Held*, that she could not sue her father-in-law for a sum of money on account of her maintenance. *Per* H. B. Bayley, J. P. Norman, L. S. Jackson, J. B. Phear, E. Jackson, F. A. B. Glover, C. P. Hobhouse, *J.J.*, confirming the judgment of the Full Bench. *Khetramani Dasi vs. Kasimath Das*. 2 B. L. R., 4. C., p. 15. *See* 2 Macnaughten, cases 2, 4, 8, 9, and 11; and *Kamalmani Dasi vs. Bhodinarian Mozoomdar*. 2 Macnaughten, p. 118; *Rai Shambullubh vs. Prankrishna Ghose*. 3 Sel. Rep., Cal., p. 33; *Mussamut Bhilu vs. Phul Chund*. 3 Sel. Rep., Cal., p. 225; *Mussamut Hemlata*. 4 Sel. Rep., Cal., 19; *Ujjalmani vs. Jaigopai Chowdhry*. S. D. A., Cal., 1848, p. 491; *Hurusoondery Gupta vs. Aunda Govind Sen*. of 1850, p. 422; *In re Ramdhone Bhattacharjee*. S. D. A., Cal., 1852, p. 796; *Shamasoondery Dabee vs. Boycunt Money Rai*. S. D. A., Cal., 1858; p. 1220; *Khudemoni Dabee vs. Tarra Chund Chuckerbutty*. 2 W. R., p. 134; and *Shamasoondery Dabee vs. Ahalya Bai Debi*. 6. W. R., p. 37.]

13. A widow after her husband's death was treated as an equal sharer in his estate with her sons, and in

conjunction with one son applied for and obtained partition as a sharer. Objections were taken as to the widow's right to the partition; these objections were over-ruled, and no appeal was made to the Civil Court. *Held*, that the partition proceedings still standing good, a suit to declare the widow entitled only to maintenance was not maintainable. *Mussamut Oodia vs. Bhoopal*. H. C., N. W. P., vol. IV., p. 137.

14. *Held*, that when the legal heirs of a deceased childless Hindu, had assented to the registration of his widow's name as his successor in his estate on certain terms which she had herself infringed by acts calculated to injure them, she was not entitled to be maintained in possession of the estate during her lifetime, but was entitled to maintenance. *Mussamut Mokoer vs. Kulean Sing*. S. D. A., N. W. P., 1865, p. 180.

15. *Held*, that a Hindu widow is only entitled to her maintenance in the form of a separate share of her husband's estate when that estate is partitioned among the sons. *Mussamut Prankoor vs. Kader Sing*. December N. W. P., 1865, p. 31.

16. [Where the maintenance of a Hindu widow was not made by her deceased husband dependent on her living with his family, she is entitled to it, notwithstanding she leave the house of his family, and go to that of her father. *Shurnomoyee Dasse vs. Gopaul Loll Dass*. 1 Marshall, p. 497.]

17. It is not necessary that a Hindu widow should be maintained in the same state as her husband would maintain her. *Kallepersand Singh vs. Kupoor Koowaree*. 4 W. R., p. 65.

18. The mother or grandmother is entitled to a share when sons or grandsons divide the family estate between themselves; but she cannot be recognized until the division is actually made; she has no pre-existing right in the estate except that of maintenance. *Sheo Dyal Tewarry vs. Jodoo Nauth Tewary*. 9 W. R., p. 61.

19. A Hindu widow who had been supported by her father-in-law, after his death sued his eldest son for maintenance, and obtained a decree for Rs. 150, notwithstanding the defendant's objection that, being one of three brothers who inherited their father's estate, he was not solely liable for the maintenance claimed.

*Held*, that, "as this was a Small Cause Court suit, an appeal did not lie.

The maintenance of a widow is, by Hindu law, a charge upon the whole estate, and therefore upon every part thereof.

The defendant might have the question raised by its being decided, by suing his brothers for contribution. *Ram chandra Dikshit vs. Savitri Bae.* 4 B. H. C. Reps., A. C. J., p. 75.

20. *Held*, that if a man put away his wife without just cause he is bound to maintain her, according to his means, so long as she conducts herself properly. Case remanded, in order that it may be determined whether the wife was or was not turned out of her husband's house without just cause, and a new decree passed conformable to law, awarding costs. *Lad Bae vs. Amtha Shivah Bae.* 27th August 1860. 7 S. D. A., Bom., p. 166.

*See* "Daughter."

*See* "Exclusion from Inheritance," 1, 3.

*See* "Illegitimacy," 1, 2, 7.

*See* "Inheritance," 21.

#### MARRIAGE.

1. The injunction of Menu that "a man learned in the Veda" can only marry in the Bramha form, is only recommendatory, and not imperative. A Sudra is, therefore, competent to marry in that form, and sue his wife's parents for the value of property left by his deceased wife. *Siva Rama Casia Pillay vs. Bagavan Pillay.* M. S. D. A., p. 44.

2. The union of a Rajput with a Jāt who is Sudra, in marriage is invalid. Even among the Jāts, as a general rule, the marriage of the widow of a younger brother by an elder is prohibited. *Mussamut Gondhee and others vs. Hanuman Sing.* 12th May 1866. S. D. A., N. W. P., p. 175.

3. The Hindu law makes no distinction between legitimate children born of mothers of the same cast. *Rajah Nugender Narain vs. Rughoonath Narain Dey.* Suth. Rep., p. 20.

As to intermarriages may be proved by declarations made by members of the family.—*Ibid.*

4. A marriage contract to be valid must be made with consent of parents on both sides. *Anund Laul Bhugwandas vs. Tapeedas Prubhoodas*. 1 Borr., p. 16.

5. Contract made by a brother with his mother's consent for the marriage of his sister, held valid and binding. *Mussamut Ruliyat vs. Madhowjee Panachand*. 2 Borr., p. 739.

6. A. (of the Lewa Koombee caste) betrothed his daughter to B., who having lately contracted a second marriage or *natra* with another woman, was sued by A. either to consent to a divorce from his daughter, or to dissolve the *natra*. Held, that A. had no right, either by the laws of the Shastras or customs of his caste, to demand a divorce for his daughter. *Hurree Bhaee Nana vs. Nathoo Koober*. 1 Borr., p. 65.

7. According to the Hindu law, a marriage once solemnized by the ceremonies of Wagdan and Luptapuddee can never be set aside, although the marriage may have been irregularly contracted by the mother, without the consent of the father. *Baee Rulyat, Durrumchund Nuthoo, and Nuthoo Manickchand vs. Joychund Kewell*. 18th August 1843. S. D. A. Bom., p. 43.

8. [Loss of reason or lunacy does not incapacitate from marriage. *Daby Churn Mitter vs. Rada Churn Mitter*. Montrieu, C. H. L., p. 538.]

9. Claim for the restoration of conjugal society preferred by husband in respect of his wife, the widow of his deceased brother, married by ceremony of Kurao, decreed, the marriage being according to the usage of the tribe of the parties legal and valid. *Sook Lall and others vs. Toolsee*. S. D. A., N. W. P., 1866, p. 131.

10. If a Hindu neglects to provide a husband for his daughter in time, he loses the right to dispose of her in marriage. *The King vs. C. Kistnama Naik*. 2 Str. N. M. C., p. 251.

11. A. died leaving a nephew F., who succeeded to his property, and a widow B., and an unmarried daughter C., B., to defray the marriage expenses of C., borrowed from D. a sum of money. D. sued B. and F. for recovery of the amount from the estate of A. Held, that the marriage of unmarried daughters is one of the objects for which a widow could alienate a portion of her deceased husband's estate; consequently, a debt contracted for this purpose, should be a charge on the estate of the deceased, and not



on the widow personally. *Prenj Narain vs. Ajodhia Purshad*. 17th June 1848. S. D. A., Cal., p. 540.

12 *Held*, that the second or *pât* marriages are allowable in the Thakur Lohana caste, and that a legitimate son by such a marriage is entitled to share equally with his half-brothers (the sons of the first wife) in his father's property ; and that in this case he is entitled to recover his share from each and all of his half-brothers, the will adduced by the latter as that of their father being invalid, from the fact that the stamp on which it is written does not suffice to cover the amount of the property of which it professes to dispose it. *Bhanjee Pitamber Shet Tukur vs. Nuthoo Pitamber Shet Sukur*. 9th March 1861. 8 S. D. A., Bom., p. 77.

*See "Sikhs."*

*See "Illegitimacy," 1.*

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#### SAGYI MARRIAGE.

*See "Inheritance."*

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#### BYAHII MARRIAGE.

*See "Inheritance."*

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#### BEEAH MARRIAGE.

*See "Sikhs."*

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#### ANUND MARRIAGE.

*See "Sikhs."*

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#### MIGRATION.

1. Upon a claim to the inheritance of a zemindary situate in Midnapore, which had been in possession for a long period anterior to the institution of the suit, by a family of *Sutgop Brahmins* who had immigrated from *Bengal* to *Midnapore*, but had retained their laws and performed their religious ceremonies, according to the *Dayabhaga* and other authorities in force in Bengal. *Held*, by the Judicial Committee, affirming the judgment of the Sudder Court, that the *Dayabhaga Shastras* must govern the descent, and not the *Mitakshara*, which prevailed in *Midnapore*.

A deed of gift of the zemindary to a stranger by the widow of the zemindar last seised, who died without issue

which gift was made with the confirmation of the *Bandhus*, the mother's brother's sons, the heirs. *Held*, to be good by the *Dayabhaga Shastras*, as against a party claiming the succession, according to the *Mitakshara*, as being descended, in the seventh remove, in the male line, from the common ancestor. *Raney Srimutee Dabca vs. Raney Koond Suta and Raney Rung Lutta, and others.* 4 M. L. A., p. 292.

2. The presumption that a Hindu family, immigrating into Bengal from the North-Western Provinces, imports its own customs and laws as regulating the succession and the ceremonies of Hindu law in that family, may be rebutted by showing that, except as regards marriage, all other ceremonies are performed according to the law of the Bengal school and by Bengal priests. *Ram Bromo Pandah vs. Kameenee Soondurce Dossee.* 6 W. R., p. 295; *Wym.*, p. 3.

*See* "Inheritance," 8.

*See* "Presumption," 11.

#### MOHUNT.

1. A claim for the office of presiding mohunt of a temple at Juggurnath was decided in favor of the plaintiff, on the grounds of his having been the principal *chela* or pupil of the late mohunt, of his having been nominated by the latter to the succession, and of the nomination having been adhered to by the appointing mohunt, during the latter years of his life. *Mohunt Rama Nooj Doss vs. Debraj Doss.* 6. Sel. Rep., Cal., p. 262, 17th June 1839.

2. The peculiar usages of each endowment should be observed in nominating persons to the office of superintendent. *Mohunt Gopal Doss vs. Mohunt Kerparam Doss.* 3rd June 1850. S. D. A., Cal., p. 250.

3. Where the custom is for a body of mohunts to acknowledge publicly a newly-appointed superintendent, it should be adhered to, and a nomination by the last incumbent unattended by such acknowledgment was not confirmed.—*Ibid.*

4. A mohunt by his will appointed *L. D.*, his spiritual brother, to be his successor, and after making such appointment, his will thus continued :—"Amongst all my disciples, I think Greedharee is a little intelligent and clever but of younger age than befits a mohunt. Should he

receive instruction and learn the duties of mohunt under your guidance, he might probably be competent. Wherefore I direct that you will keep Greedharee Doss with you, and initiate him well in the duties of a mohunt, and when you feel yourself incapable of conducting the business as above, you can appoint Greedharee Doss as mohunt in your place, and not otherwise."

*Held*, first, that a mohunt may appoint a spiritual brother, and *L. D.*, being a spiritual brother, the appointment was valid, and he was entitled to succeed upon the testator's death.

*Secondly*, that the direction for appointing Greedharee did not of itself vest the mohuntship in Greedharee: but that the intention of the testator was that *L. D.* should not appoint him if he should turn out to be, in his opinion, incompetent.

*Thirdly*, that the testator had no power to attach any such condition to the interest his appointee should enjoy in the mohuntship. For a person having a fee-simple in an estate with the power of appointing to the succession, has no right to annex to it conditions which the person who gave him the power of appointment never gave the power to annex. In the absence of such power, therefore, a mohunt who once nominates his successor has no right to give directions to his successor when his turn to nominate comes as to whom he should nominate.

*Fourthly*, that the testator having no power to give any direction as to the person who should be *L. D.*'s successor, *L. D.* was entitled, after he had succeeded to the gудdee, to appoint as his successor a person other than Greedharee.

*Fifthly*, that even if, by custom a power to appoint two mohunts in succession had been established, still, under the words of the will, a discretion would have been left to *L. D.* in the choice of his successor, and he would not have been bound to appoint Greedharee.

The Court has no jurisdiction to direct a new election. *Greedharee Dass vs. Nund Kishore Dutt Mohunt*. 1 Marshall, p. 573. Confirmed by the Privy Council in appeal, who held that the only law as to mohunts and their offices, &c., is to be found in custom and practice, which is to be proved by testimony. There cannot be two existing mohunts, and the office cannot be held jointly. 8 W. R. P. C. Rulings, p. 25.

5. According to the established usage of the religious order of *Gosains* or *Sunyasis*, the installation of a person as Mohunt by the assembly of neighbouring *Mohunts* at the obsequies of a deceased Mohunt, is conclusive. *Dhunsing Gir vs. Mya Gir*. 15th August 1806. 1 Sel. Rep., Cal., p. 202.

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MOTHER.

*See* "Adoption 19-21."

*See* "Parent and Child."

*See* "Alienation," 21.

*See* "Guardian and Ward," 1.

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MOTHER'S BROTHER.

*See* "Bandhus."

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MATERNAL GRANDFATHER.

*See* "Inheritance."

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MATERNAL UNCLE.

*See* "Bandhus."

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NEPHEW.

*See* "Alienation."

*See* "Inheritance."

*See* "Adoption," 3, 30, 31, 25

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ONUS PROBANDI.

1. Where both parties are descendants of the same common ancestor, and plaintiffs prove that the property claimed belonged to that common ancestor, and separation between the parties has taken place within the statutable limit, it lies on the opposite party asserting the property to be divided to show exclusive title by separate acquisition by some ancestor apart from the right of succession by inheritance from the common ancestor, or a distinct severalty of interest and a clear adverse possession for more than twelve years. *Bainee Sing vs. Bhurth Sing*. H. C. N. W. P. Vol. I., p. 162.

2. *Held*, that the admission of a certain property being joint and ancestral, throws the *onus* of proving exclusive and adverse possession beyond limitation upon the sharer refusing to admit other heirs. *Dabee Suhai vs. Sheo Doss Rai*. H. C. N. W. P., Vol. I., p. 285.

3. Where the plaintiff was a minor, and his interest could not, *prima facie*, be alienated. *Held*, that the *onus* of proving that due inquiries were made as to the necessities for the loan, and that it was incurred by the manager for benefit of the estate lies on the defendant. It is not necessary to show that such necessities actually existed, but that reasonable inquiry was made as to the existence of such necessities, and the object for which the loan was intended. *Polundur Singh vs. Rampersad*. H. C., N. W. P., Vol. I., p. 147.

4. In a suit brought by a Hindu son, for himself and on behalf of three infant brothers, to set aside a sale of certain ancestral lands which had been made by his father without his concurrence. *Held*, that the *onus* of proving that the payment of the debts on account of which the property was sold, was not a common family necessity was laid upon the plaintiff. *Babbaji Sakhoji vs. Ramshet Pandushet*. 2 B. H. C. Reps., p. 22.

5. A Hindu wife seeking to exempt property from responsibility for her husband's debts, must clearly prove that she had *Streedhun*, and that she purchased the property with her self-acquired funds. *Brojo Mohun Mytee vs. Mussamut Radha Coomaree*. Suth. Rep., p. 60.

6. [The burden of proving property (the subject of a gift by a Hindu widow) to be *Streedhun* rests with those claiming under her. *Sreemutty Chundermonee Dossee vs. Joy Kissen Sirkar*. 1 W. R., p. 107.]

7. [When a Hindu widow sells or mortgages from necessity any portion of the real estate of her infant son which she holds in trust for him, the burden of proof of such necessity, if it be called in question by the minor after reaching his majority, lies on the mortgagee or purchaser. *Gooropersaud Jena vs. Muddon Mohun Soor*. 11th December 1856, S. A. D., Cal., p. 980.]

8. [On a claim being preferred by a member of an undivided Hindu family to property as self-acquired, without the aid of joint funds, by his exclusive industry, the burden of proof rests with the party so claiming. *Sree Narain Ghose vs. Komullachurn Roy*. 18th April 1857. S. D. A., Cal., p. 614.]

9. The defendant showed that her husband had left the family residence, and acquired property in his own name. *Held*, that the *onus* was upon the plaintiff to show that, notwithstanding separation and acquisition above referred

to, the family continued joint. *Mussamut Thakua Kowar vs. Bungsee Tewarry*. 31st January 1862. S. D. A., Cal., p. 27.

10. Where a son under the Mithila law sued to set aside sales by his father. *Held*, that the purchasers were not bound to show an absolute necessity for the sales, if they have acted *bond fide* and with due caution, and were reasonably satisfied of the necessity of the sales.

11. The *onus probandi* in such cases will vary according to circumstances. *Mussamut Bhoorun Koowur vs. Sahebzadee*. 6 W. R., p. 149, 2 Wym., p. 164.

See "Alienation," 6, 11.

See "Co-parceners," 5, 6, 8.

See "Undivided Hindu family."

See "Presumption,"

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#### OUTCASTE.

See "Inheritance."

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#### PALUCK PUTRO.

See "Adoption." 102

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#### PARENT AND CHILD.

1. In a claim to the possession of a child of tender years, instituted by its grandfather against its mother, it was held that, in consequence of the pregnancy of the latter by a second marriage, her title, by Hindu law, to the child, so long as it remained at the breast, no longer held good. *Narsee vs. Ruttonjee Nuthoo*. 20th June 1851. S. D. A., Bom., p. 103.

2. The legal age of discretion for Hindus in India is uniformly sixteen years. Up to that age the father has an undoubted right to the custody of his children. In *re Hem Nath Bose*. Hyde's Rep. for 1862 and 63, p. 111.

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#### PARTITION.

1. Conviction of crime, such as stealing ancestral property excludes a Hindu from partition of family property. *Choondoor Lutchmeedanee vs. Narasimmah*. M. S. D. A., 1858, p. 118.

2. A party suing for division, and dying while the suit is pending, is held to have died undivided; and his widow

cannot claim his share. *Velaynda Gaundan vs. Kuppanmen*. M. S. D. A., 1859, p. 263.

3. A minor can sue for division only on the ground of malversation and danger to his interests while the property is in the hands of the managing member.—*Ibid*.

4. The existence of a deed of division does not prove the occurrence of a division, which, by law, can only be recognised, when it is made apparent that the parties have entered upon their several shares. *Sooba Naiken vs. Tangaparoomal Pillay*. M. S. U. 1859, p. 11; *Latchmana Baligay vs. Atchamma*.—*Ibid*, p. 50; *Kuppammul vs. Punganadaiyan*.—*Ibid*, p. 260.

5. *Held*, that a will made by a Hindu dividing ancestral property between his sons, and assigning a share to his wife with the power of disposing of it, was illegal under the Hindu law. The widow was entitled to receive for maintenance a share of the property equal to the share of one son. *Rajah Buldeo Sing vs. Koonwur Mohabeer Sing*. H. C., N. W. P., Vol. I., p. 155.

6. When property is joined and ancestral, mere registration of the widow's name after her husband's death, and held possession by her, is not sufficient proof that the property has been divided in the absence of any evidence of actual partition. *Luchimonpersaud vs. Mussamut Monee Koonwur*. H. C., N. W. P., Vol. I., p. 221.

7. Where the members of an undivided Hindu family have divided a portion of the estate, and held their respective shares separately, such shares will be liable to the incidents attaching to separate estates, although the whole of the joint property is held as between the members of a Hindu joint family, although it has not been sanctioned by the Board of Revenue, it being shown that for several years after the partition the members of the family had separately enjoyed the shares which fell to them by the partition. *Mussamut Hoolas Kooer vs. Mansing*. H. C., N. W. P., Vol. IV., p. 37.

8. Before partition a Hindu father has no definite share in joint ancestral property which he can alienate, *Nowbatram vs. Durbaree Sing*. H. C., N. W. P., Vol. II., p. 145.

9. The ordinary gains of science are divisible when such science has been imparted at the family expense, and acquired while receiving a family maintenance. *Chalakonda Atani vs. Chalakonda Ratnachalam*. 2 Stokes, p. 56.

10. [The doctrine that when, after a partition of a joint family estate, a portion of the estate remains undivided, the portion which remains undivided cannot afterwards be partitioned, refers to a partition made by a father amongst his sons and their co-heirs. It does not refer to the case where a partition has been made by the joint owners amongst themselves. *Sreemutty Shama-soondery Dossee vs. Kartickchurn Mitter*. Bourke. H. C. Rep., p. 326.]

11. This was a suit by plaintiff to recover from his brother's widow, the defendant, one and a quarter share of the Mailavaram Mutta which he alleged to have been wrongfully delivered by the revenue authorities to the defendant in accordance with a certificate granted by the Civil Court of Masulipatam. Plaintiff alleged that he was undivided, although there was an agreement for a division. Defendant pleaded that there was a complete division under the aforesaid agreement, and that her husband after division made a will bequeathing to her what the plaintiff now claims.

The Civil Judge found separate residence, and on the authority of paragraphs 282, 283, and 284 of Mr. Justice Strange's Manual, decided that the family was undivided.

*Held*, on appeal, that the agreement partially acted upon, and not denied, is conclusive evidence of the division previously come to by mutual consent; that, whether the property was actually divided or not the family was divided, the brothers became capable of contracting and did contract, and that the right to sue upon the contract clearly survived to the defendant, who must have recovered; and that she had therefore a perfectly valid defence to the present action. *Raja Suránény Lakshmy Venkama Row vs. Raja Suránény Venkata Gopala Narshima Bahadur*. 3 M. H. C. Rep., O'Sullivan and Mills, p. 40.

12. Partition may be proved by circumstances in the absence of direct evidence. *Doe. dem. Ramasawmy M. vs. Vallatah*. 2. Str. N. M. C., p. 211.

13. Suit by a widow to recover her husband's share, whom she alleged to be a divided member of a Hindu family, under an agreement to the following effect:—

"When we lived together a disagreement arising amongst females, we have divided....."

"Thus we shall from this date divide and enjoy the income of the lands. When the moiety of lands belonging



to our uncle S. in the said three villages shall be equally divided, we shall also share our moiety equally, and obtain separate pattas.....We hold no pecuniary concern." *Held*, following the judgment reported in III. M. H. C. Reps., p. 40, and that of the Privy Council in Appu Ayyan *vs.* Ramasubha Ayyan, (11 M. I. A., p. 75,) that when the members of an undivided family agree among themselves with regard to particular property that it shall thenceforth be the subject of ownership in certain defined shares, each member has thenceforth a definite and certain share in the estate which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually divided. *Nàrāyan Ayyar vs. Lākshmi Ammal.* 3 M. H. C. Reps. O'Sullivan and Mills, p. 289.

(See Undivided Hindu family, *case Appovier vs. Ramasubha Ayyan.*)

14. In a suit in which the question was whether there had been a division, the sole evidence of division was the decision of a punchayet reciting that division. The question, however, not having been at all material to the point then in dispute. *Held*, that the decision was not sufficient evidence of the division.

Property acquired by a Hindu while drawing an income from his family is liable to partition, and the quality of the fund cannot be altered by the mode of its investment. *Ramasheshaiya Panlai vs. Bhagavat Panday.* 4 M. H. C. Rep., O'Sullivan and Mills, p. 5.

15. [Partition of a dwelling-house may be claimed as of right by a Hindu. *Hullodur Mookerjee vs. Ramnath Mookerjee.* 1 Marshall, p. 35.]

16. Actual division of property is not necessary to constitute partition. "Distinct preparation of food," after an agreement in these words "henceforth we are disunited," is partition. If the parties have mutually declared their intention of enjoying their own shares separately, and thereby disclaim all rights as joint owners in the shares of their co-parceners, it would constitute partition. *Jeolukhun Kooer vs. Thacoor Anondo Missar.* *Sevestre Con., Mar. p.,* 503.

17. [Where property is acquired whilst a Hindu family is joint, the inheritance goes *per stripes*, and not *per capita*. *Ramguttay Doss vs. Nundokoomar Doss.* 2 W. R., p. 11.]

18. Any act or declaration showing an unequivocal intention on the part of any shareholder to hold or enjoy his own share separately, and to renounce all rights upon the shares of his co-parceners, constitutes a complete severance or partition. *Bulakee Lall vs. Mussamut Indurputtee Koonwur.* 3 W. R., p. 14.

19. An arrangement contained in a deed executed by the members of a joint Hindu family to effect a separation of property is *prima facie* evidence of a valid separation. No actual division by metes and bounds is necessary. *Kulponath Doss vs. Mewah Lall.* 8 W. R., p. 302.

20. The general rule of Hindu inheritance is partibility, the succession of one heir, as in the case of a *raj*, is the exception. *The East India Company vs. Kamachee Boye Saheba.* 4 W. R., Privy Council Cases, p. 42.

21. Deeds of sale and mortgage and mutations of names in the Collector's Register as amongst members of a Hindu family are evidence of separation. *Peary Loll vs. Bhawoot Koer.* S. N. W. R., p. 18.

22. There may be a partition of an estate without a regular separation and actual division of lands. *Lalla Sreepersaud vs. Mussamut Akonjoo Koonwur.* 7 W. R., p. 488 ; 3 Wym., p. 298.

23. The declaration of an intention to become divided in estate amounts to a valid separation, though not immediately perfected by an actual partition of the estate by metes and bounds. *Mussamut Vato Koer vs. Rowshun Sing.* 8 W. R., p. 82 ; 4 Wym., p. 63.

24. Under the Hindu law two things at least are necessary to constitute partition. The shares must be defined, and there must be distinct and independent enjoyment.

25. Whatever is acquired at the charge of the patrimony is subject to partition ; but when the common stock is improved, an equal share is ordained. Where a co-parcener, with comparatively small detriment to the joint estate, acquires any separate property by his own labor or capital, the property is nevertheless to be considered joint, although the acquirer gets a double share. *Sheo Dyal Tewary vs. Jodoonath Tewary.* 9 W. R., p. 61 ; 5 Wym., p. 55.

26. Enam villages granted by Government to the grantee and his male heirs for services rendered to the State, are not, by the Hindu law in force in the Southern

*Mahratta* country, distinguishable from other ancestral real estate, and are divisible among the heirs of the grantee. *Budrao Hunmont vs. Nursing Rao*. 6 M. I. A., p. 426.

27. There may be a partition in estate without any actual division of the lands in parcels, and allotment of those parcels to the different sharers to be held by them in severalty. *Mussamut Josoda Koonwur vs. Gourie Byjonath Sohae Sing*. 6 W. R., p. 139 ; 2 Wym., 32.

28. Where, with small aid, from paternal, separate and distinct properties are acquired, principally through the exertions of particular members of a joint Hindu family, such members are entitled to a double share upon separation. *Sree Narain Berah vs. Gooroo Persaud Berah*. 6 W. R., p. 219 ; 2 Wym., p. 262.

29. In a suit governed by the Mithila law between the widow of a Hindu and his brothers, in which the former alleged the separation of her husband from the rest of the family, and the latter denied it. *Held*, that a deed of partition was not necessary to prove separation. According to *Mitacshara*, it may be proved either by evidence of kinsmen, by record of the partition, or by separate transaction of affairs. *Ishur Dutt Sing vs. Kissoree Koonwur*. 29th June 1859. S. D. A., Cal., p. 858

30. *Held*, that when partition is denied, the fact may be ascertained by reference to separate transactions of affairs. *Held*, further, that where there is no assertion of waste or alienation, the possession of a Hindu childless widow of her husband's share of divided ancestral property, cannot be interfered with during her lifetime. *Mussamut Parbati vs. Gungaram*, 21st April 1865. S. D. A., N. W. P., p. 237.

#### PRE-EMPTION.

1. A right or custom of pre-emption is recognized as prevailing among Hindus in Behar and some other provinces of Western India. In districts where its existence has not been judicially noticed, the custom will be a matter to be proved. Such custom, where it exists, must be presumed to be founded on, and co-extensive with, the Mahomedan law upon that subject, unless the contrary be shown. The Court may, as between Hindus, administer a modification of that law as the circumstances under

which the right may be claimed, where it is shown that the custom in that respect does not go the whole length of the Mahomedan law of pre-emption. But the assertion of the right by suit must always be preceded by an observance of the preliminary forms prescribed in the Mahomedan law. Ruling of the Full Bench in *Fakeer Rawot vs. Sheik Emambuksh*. S. N. W. R., p. 144; *Sevestre Con.*, Mar., p. 456a.

2. The Mahomedan law of pre-emption is applicable to Hindus in Behar. *Lotun Roy vs. Doomun Roy*. 10th August 1853. S. D. A., Cal., p. 704.

3. Time for reflection in not unnecessary delay in making a claim for pre-emption. *Dulloo Koonwur vs. Bundhoo Koonwur*. 11th January 1855. S. D. A., Cal., p. 12.

#### PRESUMPTION.

1. In a joint Hindu family, non-division must be assumed until division be established. *Chacalingum Pillay vs. Soorurnum*. M. S. D. A., 1859, p. 55.

2. The original status of all Hindu families must be presumed to be joint and undivided. The *onus probandi* is on those who put forward claims upon the basis of separation and self-acquisition. Proof of separation of shares is not sufficient to shift the burden of proof. *Mussamut Bilash Koonwar vs. Baboo Bhowanee Buksh Narain*. Suth. Rep., p. 1.

3. Hindoo families are ordinarily governed by the law of their origin, not by that of their domicile. The presumption is in favor of the law of origin until the adoption of the law of a new domicile is proved. *Luckhea Dabee vs. Gunga Govind Dobey*. Suth. Rep., p. 56.

4. Where an ancestor of a Hindu family purchased a property in the name of his youngest son, the *onus* was held to be on those claiming under the youngest son to prove that the property was his separate property, *Joynarain Roy vs. Rajah Panchanund*. Suth. Rep., p. 10.

5. In a suit by three brothers to recover an estate sold by their two elder brothers as their guardians during their minority, without any necessity, and in collusion with the purchaser. *Held*, that the *onus* was on the plaintiffs to prove that the sale was fraudulent and collusive. *Achunth Sing vs. Kissen Persaud Singh*. Suth. Rep., p. 37.

6. *Held*, that the possession by the widow, some other member of the family of, missing person's estate

may, in the absence of an indication of adverse nature, be considered to be as that of a trustee, until the expiry of the term fixed for his return. *Narain Suhoy vs. Posoo*. H. C., N. W. P., Vol. II., p. 78.

7. The normal condition of a Hindu family being joint it must be presumed to remain joint, unless some proof of a subsequent separation is given, and where property is shown to have been once joint family property, it is presumed to remain joint, until the contrary is shown: but the mere fact of a family being joint is not enough to raise a presumption in law that property acquired by one member of that family is joint property.

Where A. as purchaser claimed a share in property as being joint family property. *Held*, A. was not only bound to show that the family was joint, but that the property in question became joint property when acquired, or that at some period since its acquisition it had been enjoyed jointly by the family. *Shieu Golam Sing vs. Baran Sing*. 1 B. L. R., A. C., p. 164.

8. When neither want of enquiry nor *mala fides* is shown, the existence of legal necessity must be presumed. *Baboo Seetul Persaud vs. Baboo Gour Dyal*. 1 W. R., p. 283.

9. The presumption obtains of a continuance of a joint right to ancestral property of a member of a joint Hindu family, unless it is shown that he has, either by his own act or by the act of some one competent to bind, parted with that right. *Monaye Surmah vs. Luman Surmah*. 2 W. R., p. 288.

10. Where a family originally migrated from the Mithila Province to the Province of Bengal, the presumption is that they have preserved the religious rights and customs prescribed by the Mitacshara, unless the contrary be proved. *Koomud Chunder Roy vs. Seeta Kanth Roy*. S. N. W. R., p. 15.

11. In a case where a Hindu family migrates from one territory to another, if they preserve their ancient religious ceremonies, they also preserve the law of succession. The presumption is, until the contrary be proved, that the family so migrating have brought with them, and retain all their religious ceremonies and customs, especially when the family is shown to have brought with it, its own priests, who, and their descendants after them, continue their ministrations down to the period of contest. *Jumeruddeen Misher vs. Nobin Chunder Perdham*. 1 Marshall, p. 232.

12. A loan was granted by S., the manager of a Hindu family, while the family was joint, and the bond was taken in his name. Subsequently, upon a partition of the joint property, no mention was made of this loan. H. sued for recovery of the amount. *Held*, that the loan having been made when the family was joint, the presumption is that it was made from the common stock. *Inderjeet Koowur vs. Hurryhur Purshad*. *Sevestre Con. Mar.*, p. 40a.

13. [In a joint Hindu family the presumption is that property acquired by its members is so from the joint funds and where it is pleaded to be otherwise and self-acquired, the burden of proof is on the party raising this plea. *Ramrajah Dey vs. Ishan Chunder Dey*. 17th November. S. D. A., Cal., p. 1481.]

14. The ordinary rule of Hindu law is that the natural estate of a Hindu family is that of union and of joint property among sons. One of the defendants pleaded self-acquisition by gift from his mother. *Held*, that the *onus* was with the defendant to prove his special plea. *Chundee persad Panday vs. Sanchoo Beebee*. 29th June 1859. S. D. A., Cal., p. 1862.

15. Where a purchase of real estate is made by a Hindu in the name of one of his sons, the presumption of Hindu law is in favor of its being a *benamee* purchase, and the burthen of proof lies on the party in whose name it was purchased to prove that he was solely entitled to the legal and beneficial interest in such purchased estate. *Gopeekristo Gossain vs. Gungapersud Gossain*. 6 M. I. A., p. 53.

16. The presumption is that a Hindu family remains undivided; the *onus* is upon a party claiming as upon a division of the joint estate. *Narangunty Lutchmeedavah vs. Vengama Naidoo*. 9 M. I. A., p. 66.

See "Alienation," 6, 11, 14, *ante*.

See "Co-parceners," 5, 6, 8.

See "Disappearance."

See "Illegitimacy."

See "Undivided Hindu family."

#### PROPERTY.

1. *Acquisition of.*
2. *Ancestral property.*
3. *Joint property.*
4. *Recovered property.*

1.—*Acquisition.*

1. Land acquired by any member of a joint Hindu family, governed by the law of *Marumakkatayam*, becomes the joint property of all the members. *Murekancherai vs. Chundunga*. M. S. D. A., 1859, p. 226.

2. Landed property acquired by a grandfather and distributed by him amongst his sons, does not by such gift become the self-acquired property of the sons so as to enable them to dispose of it by gift or sale without the consent and to the prejudice, of the grandsons. *Muddun Gopaul Thakoor vs. Rumbuksh Panday*. 6 W. R., p. 71 ; 2 Wym., p. 81.

3. [Where property was acquired by several brothers who contributed, unequally, means and labor in the acquisition. *Held*, that by usage and Hindoo Law the brother who contributed most to the acquisition should receive a larger share. *Kripa Sindhu Patjoshi vs. Kanya Acharjee*. 31st December 1833. 5 Sel. Rep., Cal., p. 335.]

4. [Two Hindoo brothers living together without any paternal estate purchase sundry land, and hold them for several years in common tenancy. Upon claim by the younger against the elder for a moiety of the lands, it appearing that the defendant chiefly contributed the capital or the purchase-money, both giving their labor to the improvement of it, one-third of the joint-estate was adjudged to the plaintiff. *Koshul Chuckerbutty vs. Radha Nath Chuckerbutty*. 11th June 1811. 1 Sel. Rep., Cal., p. 448.]

5. [The name of one sharer of a joint family appearing in receipts and other papers relating to the management of the property, is not a sufficient test of separate acquisition, as frequently the name of one sharer is used, while the interests and funds remain joint. Material test is the quarter from whence the money comes. *Ramrajah Dey vs. Ishanchunder Dey*. 17th November 1859. S. D. A., Cal., p. 1481.]

6. Where the allegation is that the brothers were joint, and the property was acquired by joint funds, the mere fact of the purchase having been made in the name of only one member, of the registration of his name in the Collector's books, of his having been allowed to carry on singly a lawsuit with a neighbour in regard to the boundary between the lands, &c., are, in a question of joint or separate acquisition, wholly insufficient proof of separate acquisition. *Deela Sing vs. Toofance Sing*. 1 W. R., p. 306, 307.

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## 2.—Ancestral property.

7. In ancestral property the right of the son and grandson is equal. The grandson can put in his claim for his half share in the event of his father wishing to alienate it. The grandson can claim a partition at his pleasure, and if not granted, an action at law will lie to enforce it. *Durgasunker Kasseeram vs. Brijbullubh Motee Chund*. Sel. Rep., S. D. A., Bom., p. 44.

8. Property purchased by a father in possession of ancestral property as manager for himself and his sons is itself ancestral property. *Sudanund Mohaputtur vs. Bonomallee Doss Mohaputtur*. 6 W. R., p. 256 ; 2 Wym., p. 308.

9. *Held*, that a Hindu was not prohibited by the *Shastras* from transferring an ancestral house to pay his debts without making provision for his elder brother's widow, who had obtained a decree against him for food and clothing. *Bhugwunt Govind Deshpande vs. Goozabace*. 28th June 1861. 8 S. D. A., Bom., p. 120.

10. When the heirs of a deceased Hindu by an arrangement with a third party who claimed to be an heir, distributed the property between them, such property, after its distribution, retained its character as ancestral property, and shares taken under the arrangement are not to be regarded as the self-acquired property of the heirs who took them. *Rance Mewa Koower vs. Oudh Behareelal*. H. C., N. W. P., Vol. 3, page 311.

11. The plaintiff who sues to inherit property in the hands of his foster mother's husband's brother, on the ground that his foster-mother had devised the same to him, must prove that the property was divided. *Jyavoo Pillay vs. Ramasawmy Pillay*. M. S. D. A., 1858, p. 15.

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## 3.—Joint property.

12. The fact of the members of two branches of a Hindu family being separate in food and worship is quite compatible with their never having been separate in estate.

A document providing separate house accommodation for the members of each of the two branches, points rather to a division of enjoyment than to a division of ownership or estate.

The absence of attestation by caste-men to documents, by which a Hindu affects to deal with his property as though he were separate in estate, is circumstance which



throws suspicion of the fact of an alleged separation, as the presence of such would be satisfactory evidence of a state of things generally believed to be true at the time. *Chhabilá Máñchand vs. Jadáv Háí and others.* 3 B. H. C. Reps., *O. C. J.*, p. 87.

13. An uncle and his nephews were in a state of general severalty, but held some ancestral property in common. Such tenure by the Hindu law of Western schools will not establish the right of the nephews to take their uncle's estate before his wife and daughter's son. *Raja Patni Mal vs. Ray Manohur Lall.* 28th February 1834. 5 Sel. Rep., p. 349.

14. [The doctrine that a father takes a share in his son's self-acquired property, applies only to cases of families in joint estate, but not where separation has taken place. *Anund Mohun Paul Chowdry vs. Sreemutty Shamasoodery.* *Suth. Rep.*, p. 352.]

See "Presumption." 15.

See "Undivided Hindu family."

#### 4.—Recovered property.

15. [The Hindu Law on the subject of "recovered" property applies to cases in which the property has passed from the family to strangers, and has been held by them adversely to the family, and not to cases where the property was held by one claiming (though wrongfully) to be an unfounded member of the family.]

Merely obtaining a decree for possession is not "recovering" the property.

"Recovery," if not made with the privity of the co-heir must at least be *bond fide*, and not in fraud or by anticipation of the intentions of the co-heir. *Bissessur Chuckerbutty vs. Seetul Chunder Chuckerbutty.* 9 W. R., p. 69; 5 Wym., p. 201.]

See "Partition."

#### PURCHASER.

See "Vendor and Purchaser."

See "Alienation."

#### PUROHIT.

1. The office of Purohit is not hereditary, and no suit will lie for a share of the *birt* or voluntary fees received by

other Purohits from certain Jujmans for officiating at a Shrād.

2. A suit for fees received from Jujmans might lie on the ground of partnership or contract expressed or implied just as for a share of profits of any ordinary description of business. *Jowahir Misser vs. Bhagoo Misser*. 13th March 1857. S. D. A., Cal., p. 362.

3. Claim brought by appellant against the respondent of the Nagur caste to insist on his employing him, and him only, as his family priest, and against the other respondent, because he had interfered. The appellant's claim was held to be good according to Hindu Law, and it was declared obligatory on the respondents to employ the appellants, who were entitled to the fees for such ceremonies as had been performed. *Mooljee Purseram vs. Nagur Ramjee*. 27th July 1831. S. D. A., Bom., p. 131.

4. An action is not maintainable by a Purohit for interfering with an alleged exclusive right of performing religious ceremonies at a particular place, there being no legal obligation upon the Jujmans to abstain from employing another. *Damoodur Misser vs. Roodurman Misser*. 1 March, p. 161.

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#### PUTRIKA PUTRO.

See "Adoption," 108, 109

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#### RECOVERED PROPERTY.

See "Property," 15

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#### REUNION.

1. *Held*, that commensality after separation does not of itself constitute reunion according to the Hindu law. *Chutter Pal Tewaree vs. Gouree Tewaree*. 9th December 1865. S. D. A., N. W. P., p. 199.

2. *Held*, that re-union must be made by the parties, or some of them, who made the separation. If any one of their descendants think fit to unite, they may do so; but such a union is not re-union in the sense of Hindu law, and does not affect the inheritance. *Kishvanath Gun-gadhur vs. Krishna Ganesh*. 3 B. H. C. Rep., A. C. I., p. 169.

3. [In a Hindu family where re-union has taken place among certain members after partition, the members of the

re-united family and their descendants succeed to each other to the exclusion of the members of the unassociated or not re-united branch. *Tarrachund Ghose vs. Pudum Lochun Ghose*. 5 W. R., p. 240; 1 Wym., p. 328.

#### REVERSIONERS.

1. On the demise of a Hindu widow, the descent is to her husband's relatives, and not to her sister's son. *Linga Mulloo Pitchama vs. Linga Mulloo Gooruppah*. M. S. D. A., 1859, p. 84.

2. According to Hindu local customs, descendants in the female line appear to have no positive rights of succession, being postponed to collaterals in the male line. It was therefore held that a widow cannot be restrained from sale of houses belonging to the estate of her deceased husband by the husband's nephew in the female side. *Ramchurn vs. Mohun*. Oudh, Sel. Civ. Cases, part 2, p. 136. 24th September 1862.

3. A suit brought by a party in expectancy against a party in possession for life with an acknowledged title, for a declaration of his reversionary right, will not lie. That, in order to maintain a suit for restraint of alienation, either inchoate or complete, must be stated as the ground of action; a suit to restrain generally the power of alienation will not lie, seeing that, under the circumstances, a Hindu widow has under law a right to alienate. A suit to declare that under no circumstances could alienation be valid, would be contrary to that law. *Pranputtee Koomur vs. Mussamut Poornu Koonwur*. 2nd June 1856. S. D. A., Cal., p. 494.

4. When the transfer is made by the widow in fraud of the rights of the presumptive reversioner. *Held*, that he is entitled to a decree declaratory that the widow's act is null and void as far as it may affect the interests of the reversioner, and for provision, if necessary, to prevent any waste of the estate, the appointment of a receiver, but not to a more extensive remedy. His reversionary interest is not affected by the transfer.

Where a daughter was colluding with the widow in making transfer of divided property. *Held*, that the plaintiffs, the next reversioners after the daughter, were competent to maintain the suit to have the transfer

declared null and void. *Jowla Nauth vs. Kulloo*. H. C., N. W. P., Vol. 4, p. 55.

5. In a divided estate the plaintiffs being not the next reversioners, were not entitled to be recognised as successors. *Dal Chand vs. Mussamut Sunder*. H. C., N. W. P., vol. II., p. 173.

6. A nephew who would be next of kin entitled to the property, can, with the consent of his father and uncles the persons immediately entitled to succeed to the property, maintain a suit against the daughters-in-law of a deceased Hindu who have no other right in the property save that of maintenance. *Nandkishore vs. Nathooram*. H. C., N. W. P., vol. IV., p. 191.

7. *Held*, that plaintiff being the immediate reversioner may maintain the suit, and that his signature in Patwarry's diary as Lumburdar was not an admission of defendant's title as purchaser. H. C., N. W. P., Vol. I., page 223.

8. Where it appeared that there were other persons nearer than plaintiff, and that there had been no disclaimer of their right on their part. *Held*, that plaintiff who, according to the ordinary Hindu law of inheritance, was not the next heir, could not maintain the suit. *Gooshamee Teekunjee vs. Porooshotome Laljee*. H. C., N. W. P., Vol. 4, p. 238.

9. A distant reversioner is not at liberty to sue to interfere with the acts of a Hindu widow in possession of an estate. The immediate reversioner alone is entitled to sue. *Ramlal vs. Bunseedher*. 12th March 1866. S. D. A., N. W. P.

10. *Held*, by a majority of the Court, that mere heirs-apparent, or persons having indirect or contingent reversionary right are not on the footing of actual sharers of a mehal. *Heralall vs. Khawance*. 30th January 1865. S. D. A., N. W. P., p. 71.

11. *Held*, that when the widow and plaintiff the transferee were engaged in a scheme for evading the restrictions put by the Hindu law upon the widow's right of alienation, and were making use of the forms of a suit in furtherance of the fraud, it was quite competent for the Lower Appellate Court to determine and satisfy itself (some of the persons really interested being minors, and the transaction being open to suspicion as prejudicial to their reversionary rights) of the true nature of the transaction at the instance of the remote reversioner, even had the

nearer reversioner been present and consented to the decree being passed in plaintiff's favor. *Dowar Rai vs. Mussamut Boondu*. 12th September 1866. S. D. A., N. W. P., p. 33.

12. An action instituted by reversionary heirs against a Hindu widow in her lifetime to invalidate alienations of her husband's ancestral property, and to deprive her of the management in consequence, and to obtain possession themselves, will lie. *Nundlall Baboo vs. Bolakee Beebee*. 24th July 1854. S. D. A., Cal., p. 351.

13. The property of a deceased person in the possession of his widow reverts at her death to the reversioners in existence at that time. *Balgovind Lall vs. Rampertab Singh*. 25th June 1860. S. D. A., Cal. p. 661.

14. [The failure of a party to put in an answer in a former suit which in no way threatened his title as a reversioner, cannot be construed into a consent on his part to an alienation made by a Hindu widow, which has been found in a subsequent suit to be illegal on an issue raised to contest its validity as made without legal necessity. *Bisheshur Mookerjee vs. Jodoonath Bose*. *Suth. Rep.*, p. 48.]

15. [A widow in possession can relinquish, and, by relinquishing, anticipate for the reversioners their period of succession. A relinquishment in favor of second reversioners is also valid if made with the consent of the first reversioners. *Protap Chunder Roy Chowdhry vs. Sreenutty Joymonce Dabee Chowdhraia*. 1 W. R., p. 98.]

16. The suit was to set aside alienations made by the maternal grandmother of the plaintiff, his mother the immediate reversioner being alive. *Held*, that the plaintiff was entitled to sue to protect his own future rights. *Bal Govind Ram vs. Hirusamee*. 2 W. R., p. 255.

*See "Alienation,"* 31 to 44.

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SALE.

*See "Alienation."*

*See "Son."*

*See "Vendor and Purchaser."*

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SAMONODAKAS.

1. Samonodakas (or persons allied by a common obligation of water) belonging to the Gotra (or race or general family) of a deceased person are sufficiently cognate to

succeed to property in default of parties nearer of kin.  
*Nursing Narain vs. Bhutton Lall.* *Suth. Rep.*, p. 194.

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#### SEPARATE PROPERTY.

*See* "Inheritance."

*See* "Property."

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#### SIKHS, MARRIAGE, INHERITANCE.

1. The form or ceremony of marriage is not of its essence: an irregularity does not avoid the contract. Succession to land in Calcutta among Sikhs is governed by Hindu law. *Pro hac vice*, Sikhs are considered as Sudras.

Where there is a son of a Sikh by a *beeah* marriage, and a son by an *unand* marriage, they both inherit; but the former takes twice the portion of the latter. *Doe deni. Juggomohun Mullick vs. Saumcoomar Beebee. Montrieu, C. H. L.*, p. 544.

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#### SISTER.

1. According to the construction received in Mithila, the term "sister" includes the half sister. *Srenarain Rai vs. Bhya Jha.* 27th July 1812. 2 *Scl. Rep., Cal.*, p. 29.

*See* "Inheritance."

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#### SISTER'S SON.

*See* "Adoption, Putrika putra."

*See* "Inheritance."

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#### SISTER'S DAUGHTER.

*See* "Adoption, Putrika putra."

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#### SON.

1. Sons have in ancestral property a vested interest which is saleable in satisfaction of claims. *Gour Sarun Doss vs. Ramsarun Bluckt.* 5 *W. R.*, p. 54; 1 *Wym.*, p. 105.

2. According to the Mitacshara law, a son has an equal right with his father in ancestral property. He can compel the father to divide the property during his lifetime, and any alienation by the father made after the birth of the son, without the consent of the son, unless for a purpose justified by the Hindu law as a legal necessity will not bind the son. If the father, during the minority

of the son, alienated any property in fraud of his creditors, such fraud would not bind the son, who was neither a party, nor a privy to such fraud. *Baboo Beer Kishore Sahye Singh vs. Hurbullab Narain Singh*. 7 W. R., p. 502; 4 Wym., p. 1.

3. Under the Mithila law, as expounded by the Vivada Chintamani, and supplemented where deficient by the Mitacsara, a son has ownership in ancestral property even during his father's lifetime; and such ownership accrues on the son's birth, from which period the father and son are joint owners.

The existence of a decree against the father is not sufficient evidence of the necessity for his selling his son's interest in ancestral property. *Kantoo Lall vs. Greedharec Lall*. 9 W. R., p. 469.

4. *Held*, that a son's contingent interest in undivided ancestral property is not of such a nature as to be regarded as a debt, nor such as to make this property "his property," and so capable of attachment. *Moolchund Bhacechund vs. Dhurmlal Deepalal*. 14th January 1861. 8 S. D. A., Bom., p. 199.

5. By the Hindu law as current in Mithila (Tirhoot), a father cannot give away the whole ancestral property to one son to the exclusion of his other sons. *Sham Sing vs. Mussamut Umraotee*. 2 Sel. Rep., Cal., p. 92.

6. *A.* sued *B.* purchaser from *A's* father of certain ancestral property, for recovery of possession and partition and registry thereof. *B.* pleaded that the property was sold with *A's* consent, but failed to prove such consent. *Held*, that as the suit was for possession and mutation of names, as on exclusive proprietary right, and not a suit to declare the sale by a father of ancestral property without the consent of his son, to be illegal, it could not be brought during the lifetime of the father. *Chutter Dhareeloll vs. Bikao Lal*. 11th June 1850. S. D. A., Cal., p. 282.

7. By Hindu law, a son cannot sign for his father without the father's mark, or a written special power from him. *Pandoorung Bahoorow vs. Sudgoorow Bin Bangoorow*. 24th February 1849. S. D. A., Bom., p. 31.

8. By the Hindu law, children can claim a share in ancestral property, even during his father's life-time, and no parent can make away with such property improperly to the children's detriment. *Bace Gunga vs. Dhurumdass Nurseedass*. 27th July 1841. S. D. A., Bom., p. 16.

9. The father failing to stand forward to protect his children's just rights, or conniving at their being deprived of the same, the mother by the Hindu law, can act as their guardian.—*Ib.*

10. By the Hindu Law a son is always liable to fulfil the security engagement of his deceased father, as regards the amount of principal; and if a special agreement be made for interest, then he is also liable for interest. *Moolchand Nundlall vs. Krishna and Lalla.* 27th June 1844. S. D. A., Bom., p. 54.

11. Eldest son is alone entitled to perform the obsequies of the father. *Rookminee vs. Tooeram.* 1 Borr., p. 139.

12. A son's share of immoveable property specially appropriated for his maintenance is not attachable in satisfaction of his father's debts during the lifetime of the latter. *Amrut Row Trimbuck Pehtay vs. Trimbuck Row Amrutay.* Sel. Rep., S. D. A., Bom., p. 245.

13. In a suit brought by a son against his father to compel a division of moveable and immoveable property inherited by the latter from his paternal cousin. *Held*, that, as regards the jewels of which plaintiff required an account, the plaintiff had no right of complaint, although his father, the defendant, had made an unjust and partial distribution of them.

*Held*, also, that the suit to enforce a division of the immoveable property could not be maintained inasmuch as neither the plaintiff nor the defendant acquired any right to such property by birth. *Ráyadúr Nallatambi Chetti vs. Ráyadúr Mukunda Chetti.* 3 M. H. C. Rep., O'Sullivan and Mills, p. 455.

14. A son during the life of his father has, as a coparcener, a present proprietary interest in the ancestral property to the extent of his proper share; but beyond that he has vested in him no legal interest whatever whilst his father is alive. Except in respect of his coparcenery the right a son is not in a different position as to the corpus of the ancestral property from that of any other relation who is an heir apparent of the owner of property.

Though the Limitation Act may have been decided to be a bar to a suit by the son for partition, his right as coparcener has not thereby been destroyed, and it may be that he is entitled to relief against the improper disposal by the defendant of more than his proper share



of the property. *J. Raya Charlu vs. J. V. Ven. Kataramaniah*. Vol. IV., M. H. C. Rep., O'Sullivan and Mills, p. 60.

15. A sale in execution of a decree against a father can only be set aside by the son when the debt was contracted for an immoral purpose, the *onus* of proving the immorality being on the son. *Beer Persaud vs. Doorga Persaud*. *Suth. Rep.*, p. 310.

16. The right of an unborn son to sue does not give a perpetual right of action. *Baboo Seetul Persaud vs. Baboo Gour Dyal Sing*. 1 W. R., p. 283.

17. A son acquires by birth a right in ancestral property, and has a right during his father's lifetime to compel a partition of such property. The father cannot, without the consent of the son alienate such property, except for sufficient cause; and the son may, not only prohibit the father from so doing, but may sue to set aside the alienation if so made. The cause of action to the son accrues when possession is taken by the purchaser. A new cause of action does not accrue upon the subsequent birth of a younger brother, either to the elder brother alone, or to him and his brother jointly. *Rajaram Tewary vs. Luchmun Persaud*. 8 W. R., p. 15; 4 Wym., p. 2. (Full Bench Ruling.)

18. This rule extends to adopted sons also. *Sudanund Mohaputtur vs. Soorjomonee Deebee*. 8 W. R., p. 455; 5 Wym., p. 5.

19. A son cannot control his father's act in respect of a property, the succession to which is liable to obstruction. It is only in respect of property not subject to obstruction that the wealth of the father and grandfather becomes the property of his sons or grandsons by virtue of birth. *Jowahur Sing vs. Gyan Sing*. H. C., N. W. P., Vol. 4, p. 78.

20. A Hindu having succeeded to the property of his brother sold the same. On suit by his son during his lifetime to recover possession of the property sold. *Held*, he was legally competent to institute the action during the lifetime of his father and that the alienation by the latter was illegal. *Gourpersaud vs. Ramgholam*. 23rd May 1845. S. D. A., Cal., p. 175.

See "Alienation."

See "Conversion," 3, 6.

## SON'S WIDOW.

See "Alienation," 33.

See "Maintenance."

## SON-IN-LAW.

1. A son-in-law has no place in the line of heirs. *Saundaryammul vs. Kamatchiyammul*. M. S. D. A., 1859, p. 250.

See "Adoption," 23.

## SPIRITUAL BROTHER.

See "Mohunt."

## STREEDHUNA.

1. The claim of the husband's sister's son is to be preferred to the claim of husband's uncle's son. The husband's sister's sons take in their own right and not through their grandmother (the husband's mother). *Bunwaree Lall vs. Mussamut Parbuttee Koonwar*. 12th May 1858. S. D. A., Cal., p. 976.

2. Where with acquiescence of kin, widows took by gift from their husband an interest, which otherwise would have been for life, or would have passed to the kin, such property was to be considered as Streedhuna. *Baboo Sheo Narain Sing vs. Babu Ram Prakas Singh*. 25th September 1831. 5 Sel. Rep., Cal., 145.

3. The streedhuna property of a woman goes on her death to her husband, and failing him to his nearest kinsmen by funeral oblations. *Bunwaree Lal vs. Mussamut Parbutty Koonwar*. 16th June. 1 S. D. A., Cal., of 1860, p. 64.

4. Property derived by a woman (of the Khutree Caste) from her own father goes, after her demise, to her own sister, and not to the sister of her husband. *Juggunath Rughoonath Doss vs. Sheo Shunkur Jussoomull*. 1 Borr., p. 102.

5. A woman has full power over her *pulla* or dower. She can spend either the principal or interest for good purposes after her husband's death. Whatever balance of the dower may remain would go to her heirs. *Doolubh Das Brijbhokundas vs. Larkoonwur*. 1 Borr., p. 466.

6. According to the *Mitacshara* and the *Vivada Chintamonee* all property inherited by a woman does not become

her *streedhuna*,—immoveable property inherited from her son descends on her death to his heirs. *Punchanon Ojah vs. Lalshan Misser*. 3 W. R., p. 140.

7. Property acquired by a woman by inheritance is not to be classed as *streedhuna*. *Sengamalathammal vs. Valaynda Mudali*. 3 M. H. C., Rep., O'Sullivan and Mills, p. 312.

8. A Hindu wife or widow may alienate her *Streedhuna*, whether it be moveable or immoveable, with the exception, perhaps, of land given to her by her husband. *Doe dem. Kullammal vs. Kuppu Pillai*. 1 Stokes, p. 85.

9. The proposition that everything acquired by a woman during coverture is the property of her husband has no foundation in Hindu law. *Ramasami Padeiyatchi vs. Virasami Padeiyatchi*. 3 M. H. C., Rep., O'Sullivan and Mills, p. 272.

10. The devolution of *Streedhuna*, or wife's peculiar property from a childless widow, is regulated by the nature of her marriage. If her marriage was according to one of the four approved forms, at her death her husband's collateral heirs succeed to it. *Mussamut Thakoor Dayee vs. Rai Baluckram*. 11 M. I. A., p. 139.

11. *Held*, that according to the law of the Benares School, no part of her husband's estate, whether moveable or immoveable, to which a Hindu widow succeeds by inheritance forms part of her *dhun* or peculiar property; and the text of *Katyayana* cited must be taken to determine, *firstly*, that her power of disposition over both is limited to certain purposes; and, *secondly*, that on her death both pass to the next heir of her husband. *Bhugwandeem Doobey vs. Myna Bae*. 9 W. R. Privy Council Rulings, p. 23.

#### UNDIVIDED HINDU FAMILY.

1. [That in the absence of bad faith or of any alleged injury to the interests of the minors the acts of the managing members of a joint family in conducting the ordinary affairs of the property are binding on the minor members. *Roop Lall Mitter vs. Sree Kissen Singh*. 15th May 1861. S. D. A., Cal., p. 149.]

2. [The purchase of property in the name of a member of a joint Hindu family, and proof of acts of ownership on his part are not sufficient to raise a presumption of exclusive right to such property but that proof of the sources whence independent funds were derived is necessary

to raise such a presumption. *Hurrosoondery and Doorga Doss Sandyal vs. Hurrosoonderee Dabea*. 26th May 1861. S. D. A., Cal., p. 194.]

3. An attachment on the whole of the undivided property of a Hindu family is confirmed, in view to its sale to satisfy a decree against one of its members, if not otherwise satisfied out of the proceeds, to the extent of his share therein. *Bhagoowuloo Raghojee Malee vs. Hemmuntram Hirachund*. 23rd July 1860. 7 S. D. A., Bom., p. 135.

4. A childless widow cannot maintain an action brought originally by her husband to recover possession from his brother of property belonging to an undivided family of which both were members, as on her husband's death, childless, whatever right he had in the joint property would pass not to his widow but to his brothers. *Krishnvjee Jeewajee vs. The Collector of Belgaum*. 26th July 1861. 8 S. D. A., Bom., p. 138.

5. *Held*, that the sale of a field which the Lower Court found to have been sold by the head of an undivided Hindoo family for the benefit of that family, must be held valid. *Narayan Tejeeshet Goozur vs. Opa Thakoorshet*. 28th June 1861. 8 S. D. A., Bom., p. 113.

6. By Hindu Law the burden of showing of what separate property consists, lies upon the person who alleges the property to be separate.

A person lending money on the security of the property of an undivided Hindu family is bound to make inquiries as to the necessity that exists for such loan, if he lends the money after reasonable enquiry and *bond fide* believing it will be properly expended, he is not bound to see to the application of it. The rule is the same whether all the members of the family are adults or minors. *Gane Bhive Parab et al vs. Kane Bhive*. 4 B. H. C. Rep., A. C. J., p. 169.

7. *Held*, that on this side of India, a member of an undivided Hindu family cannot, without the consent of his co-parceners, make a gift of his share in the undivided property, or dispose of it by will. *Gangubái and another vs. Rámanná Bin Bhimanná*. 3 B. H. C. Reps., A. C. J., p. 66.

8. [The mere fact of a Hindu family living in commensality is not sufficient to raise a presumption of their

property being joint. The existence of joint funds, out of which the property might have been purchased, must also be proved to raise the presumption of the property being joint. *Radhika Persad Dey vs. Mussamut Dhurma Dasi Debi.* 3 B. L. R., A. C., p. 124.]

9. One of four Hindu brothers sued as a member of the united family for his share of the profits of a firm composed of one brother's son and Mahomedan partners. *Held*, that the plaintiff was entitled to a decree against his nephew, as all the members of an united family share all profits equally. *Jaeram Sudaseo Sarungdhur vs. Lukshumun Rughoo Shet Saring Dhur.* 2 Borr., p. 58.

10. In a joint Hindu family, the divided members inherit on failure of undivided ones. *Chokalinga Seirvagaren vs. Jyah Moodelly.* M. S. D. A., 1859, p. 35.

12. Though a Hindu family be united all the members do not share in a portion that may lapse. *Madoo Sing vs. Bindessery Roy.* H. C., N. W. P., Vol. IV., p. 101.

13. According to the true constitution of an undivided Hindu family, no individual member of the family, whilst it remains undivided, can predicate of the joint and undivided property, that he has a certain definite share

The proceeds of undivided property must be brought to the common chest or purse, and there dealt with according to the modes of enjoyment by the members of the family. But if the members of an undivided family agree among themselves with regard to particular property that it shall henceforth be the subject of ownership, in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with; and each member has thenceforth a definite and certain share in the estate, which he may claim to receive and enjoy in severalty, although the property itself has not been actually severed and divided

Where, therefore, a deed of partition was made and executed by the members of an undivided family, dealing with and making actual partition of a portion of the joint estate, but leaving the remainder to be divided at a future period in the same manner. *Held*, by the Judicial Committee (affirming the judgment of the Courts below), that such deed, being a division of right, operated as a conversion of the tenancy and a change of status in the

family, *quoad* the property specified, changing, as it were, the joint tenancy thereof into a tenancy in common; and by operation of law making the members of the previously undivided family a divided family in respect of such property. *Appovier alias Seetaramier vs. Rama Subba Aiyar*. 11 M. I. A., p. 75.

14. *Held*, that by Hindu law, a house purchased in the name of one of two brothers living undivided, is the property of both. *Sidapa Bin Revapa vs. Poonea Kooty*. 21st March 1851. S. D. A., Bom., p. 100.

15. Any male representative of an undivided Hindu family is entitled to the Wywat or office of a Wuttun in preference to a female. *Anpoorna Bae Kome Bulwuntrow Deshmook vs. Janrow Wullu Dewrow*. 15th October 1847. S. D. A., Bom., p. 74.

16. Where (notwithstanding a separation in food and residence) no formal partition of the family has taken place, the family must be considered joint and undivided, and that in such a case a widow cannot succeed ~~to~~ or retain possession of her husband's share as against his surviving brothers, but is only entitled to maintenance. *Badamoo Koer vs. Wazeer Sing*. 5 W. R., p. 78; 1 Wym., p. 116.

17. The mere circumstance that one of several brothers of a Hindu family occupied a separate dwelling house, does not rebut the presumption of the family being joint, if it appear that they dealt with the family property as joint property. *Mussamut Belas Koer vs. Baboo Bhowanee Buksh Narain Sing*, and others. 1 Marshall, p. 641.

18. A *Hindu* family may be undivided as to mess, but divided as to property. The finding of the Lower Appellate Court that the parties to the suit formed "an undivided family" was held to be a sufficient finding that they were not divided as to property. *Bhooput Roy vs. Motty Roy*. *Sevestre's Con.*, Mar., p. 4a.

19. Property of an undivided Hindu family aliened to its prejudice by the managing member of it, recoverable, under the circumstances of the case, by the other members as against the alienee. *Ramasamy vs. Sashachella*. 2 Str., N. M. C., p. 234.

*See Sashachella vs. Vencatachella.—Ibid*, p. 329.

20. The rule of Hindu law in cases of joint family property (i.e., that it must be presumed to be joint until proved to be the contrary) is applicable to a case where the

property has passed by sale into the hands of third parties, and has been redeemed by private purchase by one of the former shareholders. *Goeroopersaud Roy vs. Dabeepersaud Tewary*. 6 W. R., p. 58.

21. The mere fact of certain property standing in the name of one member of a joint family is no index to the real owner, nor is separate possession any evidence of separate acquisition.

The *onus probandi* is on the party who pleads separate property. *Lalla Beharee Lall vs. Lalla Madho Persaud*. 6 W. R., p. 69.

#### U S A G E.

1. The presents made by pilgrims of certain sects (*viz.*, Mahratta, Jhireah, Ooriah, Bengallee, Parbuttee or Hill tribe, and the Gossains or Fuckeers) to any one of the Benares Gungaputras or conductors must be divided equally among them all, according to the usage of the tribes. *Doyalnath vs. Kewulram*. 22nd February 1826. 4 Sel. Rep., p. 123.

2. To establish a family custom at variance with the ordinary law of inheritance, it is necessary to show that the usage is ancient and has been invariable, and it should be established by clear and positive proof. *Rajah Nugender Narain vs. Roghoo Nath Narain Dey*. *Suth. Rep.*, p. 20.

3. The written law of the parties takes precedence of Caste usage. *Baee Rutton vs. Lalla Munnohur*. 4th March 1848. *S. D. A., Bom.*, p. 86.

4. Where parties agreed to a decision according to the Mithila law, the specific authorities of that law, and not those of the Mitacshara, should be cited to support a *Vyvashta*. *Gopaul Sing vs. Bheekun Lall*. 14th March 1859. *S. D. A., Cal.*, p. 294.

5. A, claimed a temple or Muth called Kubeer Chourah in the Zillah of Cuttack, on the ground that the late Mohunt was Nyhujogee or Beyjogee and the plaintiff was also of the same persuasion, and a chela or disciple of the late Mohunt, who had duly appointed him his successor. That the defendant in possession was a Sunjogee, and therefore incapable of being a Mohunt. *Held*, that a Beyjogee only could be Mohunt of the Muth in dispute.

Mohunt Gopaul Dass *vs.* Mohunt Kirparam Dass. 25th March 1851. S. D. A., Cal., p. 162.

6. Where a prescriptive usage is proved or acknowledged to exist in any locality, such usage of itself is law binding on all classes to whom the usage has prescriptively been held applicable. It is unimportant whether the usage has given local force to rules of Mahomedan, or of Hindoo, or of any other law. Whatever has been so established by usage has become law within the local limits. It is, on this principle that the Mahomedan law of pre-emption has been held to be in force among parties whether Hindoos or Mahomedans, in the Behar Districts. Sheik Nuzzur Ali *vs.* Callee Churn. 8th May 1851. S. D. A., Cal., p. 322.

7. Whenever the plea of family custom is got up against the ordinary law of inheritance, it is necessary that the usage be ancient and invariable and be established by clear and positive proof. Rajah Koer Narain Roy *vs.* Dhurineedhur Roy. 7th June 1858. S. D. A., Cal., p. 1132.

8. *Held*, that in zillah Hurrishpore in zillah Cuttack the custom of *Phoolbihae* prevails. That in the zillah the son of a *Phoolbihaiee* succeeds to the property in preference of the agnates on failure of male issue by a Pat-Ranee, that the defendant in the present case is the son by *Phoolbihaiee* of the late Chukerbutty Mongraj, zillahdar of Hurrishpore and as such is entitled to succeed to the zillah in preference of the plaintiff who claims as the son of Adhikant, uncle of the Chuckerbutty. Prandhur Roy *vs.* Ranichunder Mongraj. 29th January 1861. S. D. A., Cal., p. 16.

#### VENDOR AND PURCHASER.

1. [Though a purchaser for value is not bound to prove the antecedent economy or good conduct of a Hindu widow who alienates a portion of her husband's estate, or to account for the due appropriation of the purchase-money, he is bound to use due diligence in ascertaining that there is some legal necessity for the loan, and he may be reasonably expected to prove the circumstances connected with the loan. Govindmonee Dossee *vs.* Sham Loll Bysack, and Kali Coomar Chowdry *vs.* Ramdass Saha. Suth. Rep., p. 153.]



2. In a suit for mutation of names by a purchaser from a Hindu widow, the purchaser must prove the legality of his purchase if he chooses to bring an action against the reversioner. *Oditnarain Sing vs. Dhurm Mahtoon*. *Suth. Rep.*, p. 263.

3. The property of two half-brothers (*A.* and *B.*) having been attached by loan account of a debt incurred by *A.*, a suit was entered by *B.* for the release of his half-share. *Held*, that persons lending to members of an undivided family must take care that the transaction be entered into under such circumstances as would at the time justify them in considering that the borrower being otherwise competent to act as the representative of the family would lay out the money for the family's good, and not to require that the lender should ascertain the manner in which the money might subsequently be expended. *Govind Bin Luxumon vs. Sukharam Raghoshet Hewre*. 29th July 1861. 8 S. D. A., Bom., p. 159.

4. [Where there is no doubt as to the necessity for a sale by a Hindu widow, and the vendee pays a fair price for the property sold, and acts throughout *bond fide*, the mere fact of only two-thirds of the purchase-money having been paid to creditors, would not invalidate his conveyance, he not being bound to see to the application of his money. *Rumgopaul Ghose vs. Bullodeb Bose*. *Suth. Rep.*, p. 385.]

5. [A mere declaration of necessity is not sufficient to justify a purchase from a Hindu widow. *Gungagovind Bose vs. Sreemutty Dhunmonee*. 1 W. R., p. 60.]

6. [The first duty of a purchaser from a childless widow is to satisfy himself, as an ordinary prudent man would do, as to her right to sell. *Ramdhone Bhuttacharjee vs. Ishanee Dabee*. 2 W. R., p. 123.]

7. A mortgagee acquiring by operation of law the possession of an estate mortgaged by a Hindu father without the son's consent, is bound to enquire whether the debt, on account of which the mortgage is given, is a legally necessary one or not; otherwise it will not avail him that the Court has on his application declared the mortgage foreclosed, or the conditional sale rendered absolute. *Purmamund vs. Mussamut Orumbah Koer*. *Suth. Rep.*, p. 143.

8. Where a plaintiff sought to set aside a sale by a Hindu widow, upon the ground that there was no necessity

to sell, and the Judge found against him on that point. *Held*, that it was not necessary for the Judge to enquire in this suit as to whether there was a necessity to raise money for religious purposes; for even if there had been no necessity, on that ground the purchaser could not have been turned out of possession without a refund of that portion of his purchase-money which went to discharge the debt, and the plaintiff was not bound to tender that money in the widow's lifetime. *Rajah Sha vs. Mussamut Parbutty Ojhain*. Suth. Rep., p. 140.

9. A purchaser from a Hindu widow of a portion of her husband's estate is bound to use due diligence in ascertaining that there was legal necessity for the loan, and the circumstances under which the loan was contracted. *Govind Monee Dossee vs. Shamloll Bysack*. Suth. Rep., p. 153.

10. [There is nothing in the Hindu law to show that the property of a deceased person is so hypothecated for his debts as to prevent his heir from disposing of it to a third party, or to allow a creditor to follow it and take it out of the hands of a third party who has purchased in good faith, and for valuable consideration. The creditor may hold the heir personally liable for the debt, but he cannot follow the property. *Unnopoorua Dassea vs. Gunganarain Paul*. 2 W. R., p. 296.]

(See *Nilkant Chatterjee vs. Pearymohun Das*. 3 B. L. R., O. C., p. 7.)

#### WIDOW.

1. A widow is not competent to alienate property which she has purchased with funds derived from her husband's estate after his death, and purchases from such funds will not belong to the widow, otherwise than as the land from which the money arose belong to her. *Nehul Khan vs. Hurburn Lall*. H. C., N. W. P., Vol. I., p. 219.

2. *Held*, that a party succeeding as heir to an estate, the sale of which, by the widow of the person from whom he inherits, has been set aside, is bound to refund the purchase-money paid to the widow for the purpose of discharging liabilities on the estate. *Roostum Sing vs. Alum Sing*. H. C., N. W. P., Vol. I., p. 291.

3. Where the transfer was made by the widow in favor of her daughter, who was lawful heir to the property. *Held*, that the plaintiff, a reversioner, has no cause of action

as his reversionary right is not prejudiced thereby. *Nahur Sing vs. Mussamut Rane Koonwur*. H. C., N. W. P., Vol. I., p. 235.

4. *Held*, that a daughter was competent to sue during the lifetime of her mother, the incumbrancer, the daughter being the immediate reversioner, and her reversionary right being seriously threatened. *Mussamut Golab Koonwur vs. Sib Sahi*. H. C., N. W. P., Vol. II., p. 54.

5. *Held*, that the widow's right to maintenance being a charge on the property forming her deceased husband's estate, remain claimable out of the property, notwithstanding its alienation by the heirs unless, she bargains to forego it. *Heera Lall vs. Mussamut Kousillah*. H. C., N. W. P., Vol. II., p. 42.

6. *Held*, that a widow cannot, under Hindu law, dispose of immoveable property given to her by her husband, which has become a portion of her *Streedhun*, the absolute dominion of a woman over her peculiar property not extending to land. *Baboo Gunput Sing vs. Gunga Persaud*. H. C., N. W. P., Vol. II., p. 232.

7. A suit by a widow to set aside the sale of a judgment-debtor's right as reversioner, is not maintainable. *Mussamut Shib Kopnwar vs. Sadhoo Sing*. H. C., N. W. P., Vol. II., p. 255.

8. {Although the Shastars impose on a Hindu widow the duty of living with her deceased husband's relatives, that duty has been regarded by the British Courts as a moral duty, which they will not lend their aid to enforce, and of which the non-performance does not deprive the widow of her right to inherit. By consent of the parties for the protection of the estate, which consisted of cash, the Court ordered the amount to be invested in Government Promissory Notes, in the joint names of the widow and brothers of the deceased, and directed that the interest should be paid to the sole receipt of the widow, with liberty for her to apply to the Court to order a sale, if any necessity arise which would justify a sale under the Hindu law. *Aumrut Koowaree vs. Baboo Kader Nath Ghose*. H. C., N. W. P., Vol. III., p. 182.]

9. *Held*, that a subsequent imperfect partition of a share to which a widow succeeded her husband in a joint ancestral estate, does not *per se* convert her limited life-interest therein into an absolute proprietary right, *Pohup*

*Sing vs. Chainsookh.* 17th April 1866. S. D. A., N. W. P., p. 125.

10. *Held*, that a childless Hindu widow who had succeeded her husband in the possession of a separate estate, is perfectly competent to assign the profits thereof to the payment of a debt. *Koowar Sheo Mungul Sing vs. Mussamut Gonesh Koower.* December. S. D. A., N. W. P., p. 108.

11. A widow does not inherit the property of her husband when held in co-parcenary. She is only entitled to maintenance. *Nund Koowar vs. Tootee Sing.* 4 Sel. Rep., Cal., p. 330. In note in *Mussamut Gyan Koonwer.*

12. A childless widow takes a limited interest in her husband's estate. *Panchcowree Mahtoon vs. Kaleechurn.* 9 W. R., p. 490.

13. According to the Hindu law as current in Benares, a childless widow is not entitled to succeed to the estate of her husband, which devolved entire on him from his ancestors to the exclusion of his brothers. *Rajah Shumshere Mull vs. Ranee Dilraj Koonwur.* 31st January 1816. 2 Sel. Rep., Cal., p. 216.

14. According to the Hindu law as current in Agra, a childless widow, after her husband's death, will succeed to the moiety of a village granted to him and his brother by the Rajah of the country on a rent-free tenure, partition being presumed. She has only a life-interest therein, and cannot alienate it. After her death it will go to her husband's heirs. *Than Sing vs. Mussamut Leetoo.* 2nd December 1819. 2 Sel. Rep., Cal., p. 411.

15. According the Mithila Law, a childless widow does not succeed to her husband's share of a joint undivided estate, if there be brothers of the husband living. *Baboo Runjut Sing vs. Baboo Obhye Narain Sing.* 26th July 1817. 2 Sel. Rep., Cal., p. 315.

16. [The widow of a brother of a divided family cannot alienate her interest in her husband's separate estate to the prejudice of reversionary heirs, except under legal necessity. *Ramkissen Singh vs. Cheet Banao.* Suth Rep., p. 101.

17. A widow's claim to maintenance upon an estate does necessarily render the sale of the property subversive of her right, for even if there be no other property, out of which that maintenance can be derived, there is nothing to prevent her from suing to establish her right to make her maintenance a charge upon the property sold. *Anund-*

moyh Goopta *vs.* Gopal Chunder Banerjee. *Suth. Rep.*, p. 310.]

18. [A Hindu widow is incompetent to sue as representative of her deceased husband while sons are alive. *Ramkanye Gossamee vs. Meernomoye Dossee.* 2 W. R., p. 49.]

19. Widows have no part in their husband's joint estate, and the mere fact of the husband having treated a property as his own, so far as to mortgage it during his lifetime, is no sufficient reason for the conclusion that the property was his separate property, and, as such, descended to his widows. *Lewis Cosserat vs. Sudaburt Pershad Sahoo.* 3 W. R., p. 210.

20. [A widow of a childless member of a divided family is entitled to a life-interest in her husband's estate after the death of an adopted son before attaining majority. *Soondur Koomaree Dabee vs. Gudadhur Pershad Tewaree.* 4 W. R., Privy Council Rulings, p. 116.]

21. A widow succeeding to the estate of her own son does not lose the right to exercise the power of adoption. By making an adoption, she divests herself of her own estate only. *Bycunt Monee Roy vs. Kristo Soondry Roy.* 7 W. R., p. 392; 3 Wym., p. 255. *See* *Mussamut Bhoobunmoyee Dabee vs. Ramkishore Acharj Chowdree.* 10 M. I. A., p. 279.]

22. A widow of a member of a joint Hindu family cannot succeed to her husband in preference to his brother, and is no heir to her brother-in-law or to his widow. *Banee Pershad vs. Mussamut Mohaboodhy.* 7 W. R., p. 292; 3 Wym., p. 189.

23. Funeral expenses of a widow is chargeable on the share or estate of her late husband, by whomsoever taken, and not against her daughter, on pretence of her inheriting the *Streedhan* of her mother. *Sheolall vs. Ichha.* 1 Borr., p. 473.

24. A widow on marrying again must deliver up all her late husband's property to his daughter, in default of his nearer heirs. Alienation of it by the widow to her first husband's nephew set aside in favor of her daughter's claim. *Hurkoonwur vs. Rutton Bae.* 1 Borr., p. 475.

25. A widow whose husband pre-deceased his father has no claim to a share of her father-in-law's estate along with the daughters of another son who survived his father. *Mussamut Jeethee vs. Mussamut Sheo Bae.* 2 Borr., p. 640.

26. A widow cannot betrothe her daughter without consent of her husband's brother. *Kumla Buhoo vs. Munnee Sunkur Ichha Sunkur*. 2 Borr., p. 746.

27. A childless widow takes as heir, but it is only a special and qualified estate. If there be collateral heirs of the husband, the widow cannot alienate the property, except for special purposes, such as for religious or charitable objects, or those acts which are supposed to conduce to the spiritual welfare of her husband, in which circumstances she has a larger power of disposition than that which she possesses for purely wordly purposes. To support an alienation for the latter purpose, she must show actual necessity. *The Collector of Masulipatam vs. Cavalry Vencata Nar-rainapah*. 8 M. I. A., p. 529.

28. Waste on the part of a Hindu widow in possession being proved, it is not competent to the Court to put the reversioner in possession, assigning maintenance to the widow. A manager should be appointed to the estate accountable to the Court. The reversioner may be appointed such manager. *Mussamut Maharani vs. Nanda Lal Misser*. 1 B. L. R., A. C., p. 27.

29. [A widow may, as guardian of her infant sons, sell the land descended to them, when necessary, for support of the family. *Doe Dem. Bissonath Dutt vs. Doorgapersad Day*. Montriou., C. H. L., p. 542.]

30. A Hindu died possessed of self-acquired property in land, leaving no sons or sons' sons, but one widow, a daughter by the widow, and another daughter by an elder wife, deceased. The last died in the widow's lifetime, leaving two sons.

*Held*, that the daughters as co-heiresses took an estate in remainder, in vested interest on their father's death, and that such vested right, on the death of one of them during the widow's lifetime, passed by inheritance to her sons, who, upon the widow's death, became entitled to enter into possession of their mother's half as her representatives.

The widow in Western India has only a particular estate for life in the immoveable separate property of her deceased husband. *Jamiyatram and Uttamram vs. Bai Jamna*. 2 B. H. C. Reps., p. 11.

31. *Held*, that a Hindu widow having a life-interest only in immoveable property inherited from her husband has

an independent power of sale over the same to the extent of such life-interest, and no further. *Mayaram Bhairam vs. Moteram Govindram*. 2 B. H. C. Rep., p. 313.

32. A childless Hindu widow and nearest heir of her deceased husband has, under the Mitacshara law, an absolute right over all the moveable property left by him, and can alienate it to whomsoever she pleases.

A Government Promissory Note is not a "corrody," and consequently not immoveable property. *Doorga Daye vs. Poorun Day*. 5 W. R., p. 141.

33. Where property is joint and undivided, a widow cannot succeed, but is entitled to maintenance only. The withdrawal by her husband's brothers of their claim to his share cannot give her a title to succeed to it. *Monhurun Koonwur vs. Thakoor Pershad*. 5 W. R., p. 176; 1 Wym., p. 244.

34. [A Hindu widow who, for no improper purpose leaves her husband's family, does not thereby forfeit her right to maintenance. *Ahollya Bai Debia vs. Luckhi Monee Debia*. 6 W. R., p. 37; 2 Wym., p. 49.]

35. *Held*, that the sale by a widow of a house which forms part of the undivided family property of her late husband's family was unauthorised and invalid, and that such a sale can in no wise affect the liability of the property to answer the debts of a member of that family. *Treebhowan Khooshal vs. Lulloo Soor Chund*. 26th August 1861. 8 S. D. A., Bom., p. 198.

36. On suit by reversionary heirs, a widow was deprived of the management of the property, as her acts were entirely subversive of the rights of the heirs. *Nundlall vs. Bolakee Beebee*. 24th July 1854. S. D. A., Cal., p. 351.

37. [A personal decree against a widow does not bind her husband's estate. *Shahzada Mahomed Rubeenodeen vs. Ranee Prosono Moyee Dabee*. 6th March. 2 S. D. A., Cal., of 1860, p. 358.]

38. The widow of an undivided Hindu has no right to sell his property for payment of his debts, even though it be self-acquired. *Namasivaya Chetti vs. Sivagami*. 1 Stokes, p. 374.

39. Where a widow sued to recover from the brothers of her deceased husband a share of the property which remained undivided at his death, a division of part of the family property having taken place during the lifetime

of the husband. *Held*, that the plaintiff had no right to recover the property which remained undivided at the death of her husband. *Timmi Reddi vs. Achamma*. 2 Stokes, p. 325.

40. A sale by a widow of property derived from her husband who is divided in interest from his own family, is valid for life. Such a sale will not be set aside at the instance of a divided brother of the husband. *Bhagavatamma vs. Pampauna Ganda*. 2 Stokes, p. 393.

41. There is no rule of Hindu Law which recognises any authority in a widow entitled only to maintenance to make contracts for necessary supplies binding upon the heir in possession of the family property and liable to maintenance. *Ramasamy Aiyar vs. Minakshi*. 2 Stokes, p. 409.

42. A Hindu widow has an absolute right to the fullest beneficial interest in her husband's property inherited by her for her life. She takes as heir a proprietary estate in the land, absolute for some purposes, although in some respects subject to special qualifications, and her disposition of the property is good for her life.

43 The proposition that a widow has no estate in her husband's immovable property, but only the personal enjoyment of the usufruct is untenable. *Kamavadhani Venkatesa Subbaiya vs. Joyce Narasingappa*. M. H. C. Rep., Mills, p. 116.

Right to adopt. See "Adoption."

## WILL

### *Testamentary power.*

1. The title of a remote kinsman, though heir of a Hindu testator, who died without leaving issue, or any near relative surviving him, and with whom that remote kinsman had not been united in food, worship, or estate, cannot prevail against the title of a devisee of the property of that testator, whether such property was by the testator self-acquired, or held in severalty, either by virtue of a partition or of the non-existence, or, if any ever did exist, of the extinction, of co-parceners. *Narothun Jagjivan vs. Karsandas Hurrikisandas*. 3 B. H. C. Reps., A. C. J., p. 6.

2. By the Hindu law as administered in the North Western Provinces, a Hindu has power to make a testamentary disposition in the nature of a will. A disputed



will made by a Hindu, disposing of self-acquired estate among his family, established. *Nana Narian Rao vs. Hurree Punth Bhao*. 9 M. I. A., p. 96.

3. A Hindu may make a nuncupative will of property moveable and immoveable. *Srinivasamma vs. Vijayammal*. 2 Stokes, p. 37.

4. By the Hindu law prevailing in Madras, a Hindu in possession, without issue male, kinsman, or co-parcener, has power to make a will disposing of ancestral as well as self-acquired estate. *Nagalutchmee Unimul vs. Goopoo Nadaraja Chetty*. 6 M. I. A., p. 309.

5. A Zemindar having no issue is capable of alienating by deed or will a portion of his estate which in default of lineal issue and intestacy would vest in his wife, without her consent. *Mulraz Lachmia vs. Chalekany Vencata Rama Juggananda Row*. 2 M. I. A., p. 54.

6. By the Hindu law, as laid down in the Benares or Western school, although a widow may have power of disposing of moveable property inherited from her husband, which she has not under the law of Bengal, yet she is by both laws restricted from alienating any immoveable property which she has so inherited; and on her death the immoveable property, and the moveable, if she has not otherwise disposed of it, will pass to the next heirs of her deceased husband. There is no distinction with respect to such alienation between ancestral and acquired property. *Mussamut Thakoor Dayee vs. Rai Boluckram*. 11 M. I. A., p. 139.

7. S., a Hindu, having a wife and one daughter, executed, in his last illness a document attested by two witnesses as follows :—S., proprietor of, &c. "Up to this date, I have no son of the body. Under these circumstances the malicks of the whole of my estate, real and personal, are my wife B. C. and my daughter W. C. Therefore I, considering this for the purpose of registering the names of my wife and daughter in substitution of my own name, appoint B. as my attorney. It is proper that the aforesaid attorney, after presenting himself before the huzoor, should petition to the above effect, asking for a mutation. Whatever is done in the management of the case, I confirm it as my own act. Dated, &c." Three days before the death of S. B. the person named as mooktear presented a petition of S. to the Collector, reciting the want of heirs

male, and which then continued thus, "Under these circumstances, my wife, and my daughter *W. C.* are my heirs. Be that as it may, after my death all my property paying revenue to Government or rent-free will devolve on my aforesaid wife and daughter. Consequently keeping this in view, I file this petition to you, praying that on striking off my name, the names of *B. C.*, my wife, and of *W. C.*, my daughter, be substituted for my name as proprietor in regard to the estate, revenue-paying and rent-free, in the books of mutation and the Collectorate papers, and may remain current from the date." *Held*, that these two documents constituted a disposition of the properties by *S.* by a testamentary instrument valid according to Hindu law, and that upon the death of *S.*, his wife and daughter acquired a joint interest in the property. *Baboo Kooldeb Narain Shahee vs. Mussamut Wooma Coomaree.* 1 Marshall, p. 835.

8. *A.*, a Hindu, died leaving two grandsons, *B.* and *C.*, to whom his estate descended. They were joint in food, worship, and estate. The property was wholly situated in Bengal, and the family, who originally came from North Western Provinces, had long been resident there. *C.* died leaving his widow, *D.*, and his brother *B.* surviving him. *B.*, who was manager, died two and a half years after *C.* After *B.*'s death, *D.* brought her suit to establish her right as widow of *C.* to a moiety of family property. The representatives of *B.* set up an instrument, which they alleged to be the will of *C.*, whereby he bequeathed his share to *B.*, reserving maintenance to *D.*

The Judge of the Zillah Court of Nuddea held that the alleged will of *C.* was genuine, and dismissed *D.*'s suit. The High Court, on appeal, held (1), that *D.* ought firstly to have shown her title to sue, *i.e.*, she having admitted that the family came from Mithila, she ought to have shown that they were no longer governed by the Mitacshara; (2), that for several generations the rule of inheritance had been according to Dayabhaga; (3), that the alleged will was not proved, (there was evidence before the Court of the *factum* of the will adequate to the proof of an ordinary will, but the Court held that this evidence was outweighed by the internal improbabilities); (4), that if the rule of inheritance was not according to Dayabhaga, the will was inofficious.

On appeal to the Privy Council, *Held*—

1st.—It would be a rash conclusion on the state of the evidence in the case to suppose a preference of the law of Bengal likely to be operative on the mind of the testator; and therefore there was no foundation for treating the will as inofficious.

2nd.—It was not necessary to decide whether the rule of inheritance was according to the Dayabhaga or the Mitacshara.

3rd.—The evidence was adequate to the proof of an ordinary will, and there was no internal improbability of the will, sufficient to discredit it.

Hindu law is in the nature of a personal usage or custom, and probably migratory families or tribes would retain their own usages. The presumption is in favor of the continuance of the ancient family custom.

The decision of the High Court reversed, and the decision of the Court of Nuddea restored and affirmed. *Surendra Nath Roy vs. Hiramani Barmani*. 1 B. L. R., P. C., p. 26.

9. A will is not a valid document under the Hindu law. A bequest does not amount to an alienation of property, and at the demise of the deceased the law of inheritance would take effect. *Chokalinga Seivagaren vs. Jyab Moodelly*. M. S. D. A., 1859, p. 35.

10. Property cannot be devised by will under the Hindu law. *Kasale Aurumugum vs. Pillaynya*. M. S. D. A., 1859, p. 246.

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*Notes of Cases decided by the High Courts of the several  
Presidencies on points of Hindu Law while the Ap-  
pendix was in the press.*

HIGH COURT OF BOMBAY.

*Family Custom—Primogeniture—Rights of children  
of different wives of the same caste to inherit ancestral  
property.*

Where there is a plurality of wives equal in caste, the sons of each wife (not being the first wife) take precedence according to the dates of their respective births, and without reference to the dates of the marriages of their respective mothers.

Succession in consequence of primogeniture amongst Hindus in India seems to be the rule only in the case of large zemindaries and estates, which partake of the nature of principalities.

In estates to which the ordinary Hindu Law of Inheritance administered in Western India applies, it is not competent to a father to dispose of their ancestral property to one son to the prejudice of others. *Bhujangrav bin Davalatrav Ghorpade vs. Malojirav bin Davalatrav Ghorpade.* 5 H. C., Bom., A. C. J., p. 161.

*Minority.*

*Held*, that a Hindu of the age of seventeen years was competent to apply for the execution of a decree obtained by a deceased person of whom he was the representative.

Reg. V. of 1829, Sec. VII, Cl., 3, does not prevent a Hindu less than eighteen years of age from suing, but restricts him to a particular period, after which he is no longer a minor. *Gangadhar Raghunath vs. Chimnaji Kashav Damle.* H. C., Bom., A. C. J., p. 95.

*Ancestral Estate—Construction of Hindu Will—Guardian—Adoption of acts of—Hindu Widow's estate.*

V, a Hindu, being possessed of property, both moveable and immoveable, which he had acquired by making partition with his brother of their joint ancestral estate, died in 1850, after making a Will in the English language, by which, after various bequests, he disposed of the residue of his said property: one-third to his son V absolutely; one-third to his son L absolutely; "and the remaining clear third share to my grandsons K, V, G,

and *N*, the sons of my late son Morabá, deceased, their and each of their respective heirs, executors, administrators, and assigns, share and share alike." These residuary bequests were not to take effect until the death of the testator's widow, who was appointed executrix and manager of the whole estate during her life.

The estate was divided by arbitrators in 1855, after making provision for the testator's widow, in substantial accordance with the Will, and *V* and *L* immediately entered into possession of their respective third shares; the third share allotted to the four sons of *M*, who were then infants, represented by their mother and guardian, remained unapportioned until 1863, when, on a suit being filed, the greater part of the moveable property was apportioned. The immoveable property continued unapportioned, the bill stating that it was not for the interest of the minors then to apportion it; and the sons of *M* continued to enjoy the rents and profits, living together as an undivided Hindu family, the property being successively managed by the eldest surviving brother. In 1866, the then surviving sons of *M*, having attained their majority, joined with *V*, the son of the testator, in conveying to a purchaser a *banglá*, which had been allotted to him as portion of his share under the Will.

In suit brought by *L*, the widow of *K*, against *K*'s surviving brothers, and *S*, the widow of his brother *V*, in which *L* claimed to be absolutely entitled, as heir of her husband (and also as heir of her daughter, who died, after the husband's death, childless and unmarried), to a fourth part of the third share of the estate allotted by the Award of 1855.

*Held*, that the surviving brothers of *K* had, by their conduct since attaining their majority, adopted the acts of their mother and guardian, and had agreed to treat the Will of the testator as a valid Will, and were accordingly estopped from disputing its possessions.

*Held*, further, that the language of the testator showed an intention that his grandsons should take the one-third between them in severalty, and as members of a divided family, and that the Will must be so construed.

A Hindu widow succeeding to the immoveable property of her deceased husband, and also claiming as heir to her only daughter, who died after her father, childless and unmarried, is only entitled during her life to a widow's

estate. The doctrine laid down in the Division Court, that ancestral property after partition can be disposed of by Will, in the same way as self-acquired property, disapproved of, as opposed to the authorities and general spirit of Hindu Law. *Lakshmibai vs. Ganpat Moraba*, and *Ganpat Moraba vs. Lakshmibai*. 5 H. C., Bom., O. C. J., p. 128.

#### HIGH COURT, CALCUTTA.

##### *Joint family—Presumption—Onus.*

In a suit for possession of certain properties, on the ground that they were joint, and that plaintiffs had been wrongfully kept out of their share after a separation between them, and in which defendants averred that the family had separated long prior to the time alleged by the plaintiffs, and that the properties were acquired solely by their ancestor.

*Held*, that until the defendants gave proof of the separation alleged by them, the presumption was in favor of the family having been joint, and that the *onus* was on the defendants *Peary Lall vs. Bukharree Lall*. 12 W. R., p. 124.

##### *Will—Nuncupative Will—Donatio mortis causa.*

Where a Hindu, during his last illness, and two or three days before his death, handed over certain Government promissory notes to one of his sons without reading them, it was held by *Peacock, C. J.*, that the English law was not applicable, and that the gift was under Hindu law a good gift, and passed not only the paper, but also the debt and the interest secured by the notes. If the English law applied, the gift would be a good *donatio mortis causa*.

*Held*, by *Macpherson, J.*, under the facts, that the case was one of a nuncupative will, and that the paper was made over in immediate contemplation of death. *Coomar Coomar Krishna Deb vs. Coomar Woopendra Krishna Deb*. 12 W. R., O. C. A., p. 4.

##### *Authority to adopt—Adopted son—Right of—When adopted by the widow alone.*

When a widow adopts a son under the authority of her husband, such authority must be strictly pursued.

The son adopted is adopted to the husband, and not to the widow; and an adoption by the widow alone would not, for any purpose required by the Hindu law, give to the adopted child, even after the widow's death, any right to the property inherited by her from her husband.

Where a plaintiff was declared by a judgment to be entitled to a share of the property sued for, and the decree on that judgment awarded the whole of the property to the plaintiff, but there was nothing to enable the Appellate Court to limit the decree to the share to which his right was established, the decree was entirely set aside, and the case was remanded to ascertain that share. *Chowdry Pudum Singh vs. Koer Oody Singh*. 12 W. R., P. C., p. 1.

*Reversioner—Alienation by Widow—Suit to set aside Decree.*

A suit lies by a reversioner to declare that an alienation by a Hindu widow will not be binding upon him after her death.

A suit is not to be dismissed, on the ground that the plaintiff seeks to set aside such alienation, but the Court will grant him such relief as he is entitled to. *Shewuk Ram vs. Syud Mahomed Shumsool Hoda*. 3 B. L. R., A. C., p. 196; 12 W. R., p. 26.

*Joint property—Presumption—Onus.*

The fact of joint property standing upon the Collector's register in the name of the elder brother is no slur on the title of the younger, and no ground for a suit on the part of the latter for declaration of title.

In a suit to recover possession of a share of joint property sold in execution, on the ground that the judgment-debtor (plaintiff's brother) was the owner of only a portion, where defendant pleaded that the whole property had been made over by the grandfather by a deed of gift to the judgment-debtor. *Held*, that the plaintiff was entitled to the presumption of co-partnership and the *onus* lay upon the defence to prove that the property had passed absolutely to the judgment-debtor. *Gopal Lall vs. Mohnut Bhugwan Doss*. 12 W. R., p. 7.

*Notes of Cases decided by the late Sudder Dewanny Adawlut of Agra, not included in the General Summary of Cases.*

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PROPERTY.

*Acquisition of.*

Under the Hindoo law, acquisitions, whether of real or personal property, by one of two brothers with his own funds and by unaided exertions, are his sole property, and the other brothers cannot claim to share therein, although the brothers may be living together in a state of union. 21st August 1856. Sel. Rep., S. D. A., N. W. P., Vol. II., p. 438.

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ANCESTRAL PROPERTY.

A distribution of ancestral property which has been acquiesced in by both parties, cannot be set aside, though contrary to the ordinary rules of Hindoo law. 11th July 1854. Sel. Rep., S. D. A., N. W. P., Vol. II., p. 69.

Under the Hindoo law, the sale of the rights and interests of a father in ancestral property in payment of a debt incurred for the benefit, of the family, extinguishes the contingent interests of his sons in the property, and gives to the auction-purchaser a right to the possession of the entire property sold. 20th January 1857. S. D. A., N. W. P., Vol. II., p. 469.

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ALIENATION.

The father is incompetent under the Hindoo law to give, sell, or otherwise alienate immovables or bipeds when a legitimate son is living, without his consent. S. D. A., N. W. P., 1846, p. 276.

A Hindoo widow is incompetent to alienate the real property derived from her husband. 29th July 1850. Sel. Rep., S. D. A., N. W. P., Vol. I., p. 52.

Alienation of hereditary property by the head of the family during the minority of sons and brothers is lawful, if made for their support or for the services of religion, or other pressing necessity. 16th September 1850. Sel. Rep., S. D. A., N. W. P., Vol. I., p. 77.

Alienation of a share in an undivided property to a relative of donor, without consent of the coparceners, held.



to be opposed to Hindoo law. S. D. A., N. W. P., 1860, p. 162.

In provinces where succession among Hindoos is governed by the *Benares* Shastars, alienation of joint property, even to the extent of the alienor's own share, is invalid; but if the property be partitioned, the transfer is legal. S. D. A., N. W. P., 1864, p. 299.

Two cousins were joint-sharers in land. The share of one was sold by auction and partitioned. The share of the other was inherited by his widow in failure of more direct heirs, and held by her as a separate property. *Held*, in conformity with Hindoo Law Officer's *bywastha*, that an alienation by gift to her daughter's son by the widow was valid, and that the heirs of the party whose share was sold by auction, have no reversionary right to the share of the widow. S. D. A., N. W. P., 1860, p. 222.

Son is not competent to prefer a suit for possession of ancestral property, in his father's lifetime, by cancelment of a sale executed by the father on the ground of its illegality. S. D. A., N. W. P., 1863, p. 519.

#### INHERITANCE.

Property accruing to an individual by his own labor devolves under the Hindoo law, where there is no son nor adopted son, upon the widow. 20th May 1850. Sel. Rep., S. D. A., N. W. P., Vol. I., p. 28.

The right of inheritance to the estate of a deceased *guroo*, much less of a division of property left by him, whether hereditary or self-acquired, amongst his *chelas*, does not exist, but the right of succession depends upon the nomination made by the deceased *guroo*, confirmed by the *mohunts* of the sect on the occasion of their assembling for the performance of their duty. 29th September 1852. Sel. Rep., S. D. A., N. W. P., Vol. I., p. 469.

The right of succession to the property of a *gossain* being *mohunt* of a temple, is regulated by the rules applicable to the *Sunnyasees*. The marriage of such a *mohunt* is not valid, and his widow has no right to inherit. 22nd May 1854. Sel. Rep., S. D. A., N. W. P., Vol. II., p. 49.

The illegitimate children of a deceased *Brahmin*, *Cashetria* or *Vyasa*, have no claim on his estate beyond maintenance. 24th February 1857. Sel. Rep., S. D. A., N. W. P., p. 491.

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MAINTENANCE.

The widow of a Hindoo, who died before his father, is entitled to food and raiment only. S. D. A., N. W. P., 1859, p. 52.

Allotment of maintenance to a Hindoo widow must be proportionate to the returns of her husband's estate. S. D. A., N. W. P., 1862, p. 96.

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PARTITION.

A sharer in a joint-property is entitled to claim a separation of his share in course of law, but where the division would be obviously detrimental to the interests of the other sharers in the property, the Courts would be justified in withholding a decree. Sel. Rep., S. D. A., N. W. P., Vol. I., p. 279.

*Held*, that a father, who, after dividing his property among the sons by a first marriage, retaining a maintenance for himself, afterwards re-marries and acquires fresh property, exceeding his former property in value, is competent to transfer the property thus remaining and acquired, to his second wife, provided that it is done for the benefit of the issue by the second marriage. S. D. A., N. W. P., 1862, p. 71.

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WIDOW.

Under the Hindoo law a childless widow, although she has a right to maintenance and to live with her brother-in-law in the family house, has no right to a defined share in the house, even when her brother-in-law own and occupy the house, still less can she set up a claim to continued residence when the proprietary right of the owners of the house have passed from their hands in execution of a decree of Court. S. D. A., N. W. P., 1863, p. 638.

The right of a widow who had not succeeded by inheritance to the property in suit, but had acquired it by donation during the lifetime of her husband, and had since continued in uninterrupted possession thereof, the property moreover, having been self-acquired by the husband, who was therefore competent to dispose of it as to him might seem fit, cannot be questioned on the ground that the widow had no right to a share of the property under the Hindoo Law of Inheritance. S. D. A., N. W. P., 1859, p. 63.

A widow of a Hindoo co-parcener in a joint undivided estate is incompetent to alienate by sale to a third party the share of her deceased husband, even on the plea of the want of funds to meet family expenses. S. D. A., N. W. P., 1860, p. 785.

In a case in which two Hindoo brothers owned a joint undivided estate, and one, *A*, died, leaving a childless widow, while the second, *B*, survived for 40 years, and then died leaving similarly a childless widow. *Held*, in special appeal that under Hindoolaw, the (plaintiff) widow's right became limited upon the death of her husband to maintenance only, and no right to share in the property as heir of her deceased husband could revive upon the death of her brother-in-law, *B*, unless it could be proved that *B* had voluntarily conceded to her such right. S. D. A., N. W. P., 1860, p. 729.

*Held*, that when the owner of a joint ancestral property died, leaving a brother, a minor adopted son, who was his brother's son, and a widow; and when on the adopted son's death the widow obtained possession of the property, with the consent of the husband's brother, the widow possesses, under Hindoo law, no right to alienate the property during the life of her husband's brother. S. D. A., N. W. P., 1860, p. 361.

The widow is not entitled to succeed to joint undivided personal property. S. D. A., N. W. P., 1860, p. 364.

*Held*, that where the inheritance of a deceased person was contested between his widow, on the one side, and the widow of a son who had died during his father's lifetime on the other; the latter has, under Hindoo law, no right of share in the inheritance, but a right of suitable maintenance only, and right to any personal property of which her husband had possession during his life. S. D. A., N. W. P., 1862, p. 240.

A Hindoo widow by her unchastity and desertion of her husband's family, forfeits all claim to maintenance and to participate in the proceeds of her late husband's share of his patrimony and the next of kin to her husband is competent to exclude her from the enjoyment of the family property. S. D. A., N. W. P., 1862, p. 506.

*Held*, that a Hindoo widow is incompetent to alienate real property, inherited by her in succession to her husband, except for pious and necessary purposes. S. D. A., N. W. P., 1863, p. 476.

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